LABOR RELATIONS LAW

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I. COURT OF INDUSTRIAL RELATIONS

A. BASIS FOR DETERMINATION OF JURISDICTION OVER THE SUBJECT-MATTER

During the year in review, the Supreme Court decided several cases [1] involving the basis for the determination of the jurisdiction of the Court of Industrial Relations over the subject-matter of a case.

In the 1971 *Manila Stevedoring & General Workers Union* case, the material facts show that Benito Navarro and Emiliano Romeo were partners engaged in general stevedoring work and servicing of vessels at the North Harbor of the Port of Manila. Among the vessels under their care were those belonging to the respondent Philippine Steam Navigation Company, hereinafter referred to as Company. When the partnership broke up, the stevedores and workers under Navarro formed the National Workers and Stevedoring Union, hereinafter called National Union, while the stevedores and workers under Romeo organized the Manila Stevedoring and General Workers Union, hereinafter referred to as Manila Union. Soon thereafter, the Manila Union asked the Company for union recognition and the execution of a collective-bargaining agreement. This was turned down by the Company on the ground of lack of employer-employee relationship. As a result, the Manila Union filed in the Court of Industrial Relations an unfair labor practice case against the Company and went on a strike. The day following the strike, the Company signed a return-to-work agreement with the Manila Union and agreed, as a consideration for the lifting of the strike and picket, to bargain collectively with the latter as to terms and conditions of employment.

To recover from this set back, the National Union immediately went on a strike against the Company but this turned out to be unsuccessful and

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[1] Manila Stevedoring & General Workers Union v. Gregorio T. Lantin, et als., G.R. No. L-29785, January 28, 1971, 37 SCRA 88; Leoquinco, et als. v. Canada Dry Bottling Company of the Philippines Employees Association, et als., G.R. No. L-28621, February 22, 1971, 37 SCRA 535; Rustan Supervisory Union, et als. v. Dalisay and Rustan Pulp and Paper Mills, Inc., et al., G.R. No. L-32891, April 29, 1971, 38 SCRA 500; Bautista v. Fernandez, G.R. No. L-24062, April 30, 1971, 38 SCRA 548; Time, Inc. v. Reyes, G.R. No. L-28882, May 31, 1971, 39 SCRA 303; Union Obrera de Tabaco, Inc. v. Quicho, G.R. No. L-25799, August 31, 1971, 40 SCRA 589; and Mindanao Rapid Co., Inc. v. Omandam, G.R. No. L-23058, November 37, 1971, 42 SCRA 250.

failed to accomplish anything. Navarro and the National Union thereupon filed a civil case for breach of contract with damages in the Court of First Instance of Manila against the Company, the Manila Union and Romeo.

The amended complaint alleged that the Company awarded separate 3-year stevedoring contracts to Navarro and Romeo under which they were each to service four vessels exclusively and two others on rotation; that after these contracts were in force or a few months, the stevedores under Navarro organized the National Union while those under Romeo formed the Manila Union; that after the Company had denied the demands of the Manila Union for union recognition and the execution of a collective-bargaining agreement on the ground of lack of employer-employee relationship, the Manila Union went on a strike, picketed the Company thus forcing it to enter into an exclusive return-to-work agreement with the Manila Union; and that the breach of contract by the Company caused the National Union damages in the sum of ₱15,000. Accordingly, the National Union prayed, among others, for payment of damages and the annulment of the return-to-work agreement between the defendants Manila Union and the Company.

The Manila Union sought the dismissal of the complaint on the ground that it was outside the jurisdictional competence of the Court of First Instance of Manila because the subject-matter thereof involved a labor dispute which the Court of Industrial Relations had previously taken cognizance of in an unfair labor practice case filed by the Manila Union against the Company [2] and that the allegations in the complaint theoretically admitted the existence of a labor dispute cognizable exclusively by the Court of Industrial Relations.[3] Obviously the second ground for dismissal of the case was based on the *Suanes* test,[4] as refined in the *Insular Sugar Corporation* case.[5]

The Court of First Instance of Manila denied the motion for dismissal of the complaint as well as the subsequent motion for reconsideration. Not satisfied with the orders of the lower court, the defendant Manila Union elevated the case to the Supreme Court by means of a special civil action for certiorari.

According to the Supreme Court, the only question before it is whether the respondent Court of First Instance of Manila had acquired jurisdiction over the subject-matter of the case on the basis of the allegations of the amended complaint.[6]

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[2] 37 SCRA at 92.
[3] 37 SCRA at 93.
[4] Suanes v. Almeda-Lopez, 73 Phil. 573 (1942).
[5] Insular Sugar Refining Corporation v. Court of Industrial Relations, G.R. No. L-19247, May 31, 1963, 8 SCRA 270.
[6] 37 SCRA at 93.

Disregarding the *Suanes* test, heretofore used in determining the jurisdiction of a court, the Supreme Court went beyond the allegations of the amended complaint and reached for "the actionable wrong" sought to be redressed by the plaintiff. This, according to the Supreme Court, consisted of the unwarranted exclusion by the defendant of the plaintiff and his men from work which properly belonged to them under the guise of legitimate unionism, resulting in damages in the sum of ₱15,000.[7] On the basis of the "actionable wrong" sought to be redressed by the plaintiff, the Supreme Court held that "the subject-matter of the complaint, thus understood, falls within the jurisdiction of the Court of First Instance."[8]

Comments

Is the Supreme Court again advancing a different test in determining the jurisdiction of the Court of Industrial Relations over the subject-matter of a case?

The long-standing rule articulated in *Suanes v. Almeda-Lopez*[9] and refined in *Insular Sugar Refining Corporation v. Court of Industrial Relations*[10] is that the jurisdiction of the Court of Industrial Relations over the subject-matter of a case is determined solely by the allegations of the complaint or petition, the truth of which is to be considered as theoretically admitted by the plaintiff or petitioner.

Some five years after the 1963 *Insular Sugar Refining Corporation* case, the Supreme Court tried to advance a different test in *Associated Labor Union v. Borromeo*[11] by holding that the basis for determining the jurisdiction of a court over the subject-matter of a case is the issue joined by the parties. Since this test involves polarization of the averments in the complaint and the answer, it failed to gain acceptance and was later disowned in *Progressive Labor Association v. Atlas Consolidated Mining and Development Corporation.*[12]

As previously stated, the Supreme Court ignored the *Suanes* test in the 1971 *Manila Stevedoring and General Workers* case and opted for the "actionable wrong" sought to be redressed by the plaintiff. In the subsequent case of *Union Obrera de Tabaco, Inc. v. Quicho,*[13] the Supreme Court explained the "actionable wrong" test to mean the "mischief sought to be removed" by the plaintiff. This test is also known as the "relief prayed for" test.

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[7] 37 SCRA at 94.
[8] 37 SCRA at 94.
[9] 73 Phil. 573 (1942).
[10] G.R. No. L-19247, May 31, 1963, 8 SCRA 270.
[11] G.R. No. L-26461, November 27, 1968, 26 SCRA 88.
[12] G.R. No. L-27585, May 29, 1970, 23 SCRA 349.
[13] G.R. No. L-25799, August 31, 1971, 40 SCRA 589.

What is the prospect of this test in determining the jurisdictional competence of a court over the subject-matter of a case? My hunch is that like the "issues" test used in the 1968 *Associated Labor Union* case, the "actionable wrong" test advanced in the 1971 *Manila Stevedoring & General Workers Union* case will not likely gain acceptance because of its dubious basis and vague rationale.

In the first place, the "actionable wrong" sought to be redressed by the plaintiff refers to the relief prayed for. The Supreme Court itself, in just three months, disregarded it in *Bautista v. Fernandez*.[14] There the Supreme Court held that the "allegations of facts set forth in the proper pleading, not the prayer for relief, determine the nature and character of the action."

In the second place, the actionable wrong or mischief sought to be redressed by the plaintiff in the 1971 *Manila Stevedoring & General Workers Union* case consisted of the exclusion of the defendant from work which allegedly belonged to the plaintiff,[15] who were both assumed by the Court as independent contractors. The idea behind this assumption is that a case involving an independent contractor and an employer falls within the jurisdiction of the regular courts. Yet, the Supreme Court itself admitted that when it confronted the two "conflicting versions [of the parties to the case] regarding the precise nature of the relationship that existed between the Company on the one hand and the stevedores and workers [servicing its vessels] upon the other" [16] it could not "pass judgment ... on the true and precise nature of the relations among the parties, [whether it was an employer-employee or employer-independent contractor relationship] because the record before us is not adequate to support a finding for either side" in as much as "the entirety of the proceedings had in the respondent court consisted only of an amended complaint, a motion to dismiss, a denial of the latter, a two-page motion for reconsideration and a denial of the latter motion" besides the fact that "no answer has been filed; no evidence of whatsoever kind has been adduced."[17]

Since the Supreme Court had no basis in fact to make a finding on whether the relationship existing between the parties was one of an employer-employee relationship or one of an employer-independent contractor relationship, then it stands to reason that the Court cannot also assume that the "actionable wrong" sought to be redressed involved plaintiffs and defendants who were both independent contractors in relation to the Company.

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[14] G.R. No. L-24062, April 30, 1971, 38 SCRA 548.
[15] 37 SCRA at 94.
[16] 37 SCRA at 92.
[17] 37 SCRA at 93.

In the third place, the Supreme Court faltered when it assumed that a case involving an employer and an independent contractor no longer falls within the jurisdiction of the Court of Industrial Relations. It is enough to say here that Section 2(j) of the Industrial Peace Act does not support this view because the term "labor dispute" as defined therein includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. Furthermore, the Supreme Court itself held in *Federacion Obrera dela Industria v. Mojica*[18] that it is enough that a case involves a labor dispute "even as the plaintiff disclaims any employer-employee relationship between the parties."

In the survey of the 1970 decisions of the Supreme Court in labor relations law, I attributed the confusion encountered by both management and labor in the application of the test to determine the jurisdiction of a court over the subject-matter of a case to the failure of the Supreme Court to make a uniform expression of the rule clearly and completely in the cases it has decided after the 1963 *Insular Sugar Refining Corporation* case.

Let's take *Leoquinco v. Canada Dry Bottling Company of the Philippines Employees Association*[19] to illustrate this point. In that case, the plaintiff relied on the incomplete statement of the *Suanes* test given by the Supreme Court in *Abo v. Pehilame Employees and Workers Union*[20] and thereby lost the case. Of course, it is the duty of lawyers to keep abreast with the developments in the law, as the Supreme Court has demanded in *Halili v. Court of Industrial Relations*.[21] But, apart from the fact that this warning should work for both the bench and the bar, the Supreme Court can help a good deal if it tried to conform as much as possible with the requirements of *elegantia juris* and not lean backward too much in favor of labor. I suspect that this is the primary reason for many conflicting decisions of the Supreme Court. This should be resorted only when all things between the parties are equal. The constitutional mandate that labor should be protected does not mean that its implementation should be at the expense of the other party nor of the law.

The *Suanes* test, as refined in the 1963 *Insular Sugar Refining* case and applied in subsequent cases until the year in review, is at once a simple and workable rule to settle questions of jurisdictional competence: the jurisdiction of the Court of Industrial Relations over the subject-matter of a case is

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[18] G.R. No. L-25059, August 30, 1968, 24 SCRA 936.

[19] G.R. No. L-28621, February 22, 1971, 37 SCRA 535. See also Progressive Labor Association v. Atlas Consolidated Mining and Development Corporation, G.R. No. L-27585, May 29, 1970, 33 SCRA 349.

[20] G.R. No. L-19912, January 30, 1965, 13 SCRA 120.

[21] G.R. No. L-27773, December 28, 1970, 36 SCRA 530.

determined solely by the allegations in the complaint or petition,[22] the truth of which is to be considered as theoretically admitted or hypothetically assumed by the plaintiff or petitioner,[23] until the facts or evidence subsequently presented in the hearing or investigation show otherwise.[24]

It is in the application of this test that the Supreme Court tripped in the 1971 *Manila Stevedoring & General Workers Union* case. Instead of remanding the case to, and requiring, the respondent lower court to consider or take into account the allegations in the complaint where the plaintiff National Union can be said to have theoretically admitted not only the existence of a labor dispute between the parties but also the existence of an employer-employee relationship between them, the Supreme Court surprisingly reached deep for the "actionable wrong" sought to be redressed by the plaintiff.

Now, what are the allegations in the amended complaint from which the plaintiff National Union could be said to have theoretically admitted the existence of a labor dispute and an employer-employee relationship between the parties, thereby putting the case within the jurisdiction of the Court of Industrial Relations.

First is the allegation that after the break up of the partnership between Navarro and Romeo, the stevedores and workers who were for Navarro joined the plaintiff National Union, while those for Romeo joined the defendant Manila Union. Consequently the plaintiff theoretically admitted that: 1) there existed a controversy as to the existence of the appropriate collective-bargaining unit in the Company, 2) there existed a struggle between the two competing labor organizations for the purpose of collective bargaining, and 3) there existed a question of representation. These matters are unquestionably within the exclusive jurisdiction of the Court of Industrial Relations.

Second is the allegation in the amended complaint that the defendant Manila Union had presented to the Company a package demand for union recognition, privileges and fringe benefits, as well as the execution of a collective-bargaining agreement. Accordingly, the plaintiff National Union theoretically admitted that: 1) there existed a labor dispute, and 2) the defendant Manila Union had already taken positive steps to avail itself of the rights guaranteed in Section 3 of the Industrial Peace Act, among them the right to self-organization and the right to form, join or assist labor or-

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[22] Suanes v. Almeda-Lopez, 73 Phil. 573 (1942); Administrator of Hacienda Luisito Estate v. Alberto, G.R. No. L-12133, October 31, 1958.

[23] Insular Sugar Refining Corporation v. Court of Industrial Relations, G.R. No. L-19247, May 31, 1963, 8 SCRA 270.

[24] Edward J. Nell Corporation v. Cubacub, G.R. No. L-20842, June 23, 1965, 14 SCRA 419; Serrano v. Serrano, G.R. No. L-19562, May 23, 1964; Manila Electric Company v. Ortanez, G.R. No. L-19557, March 31, 1964.

ganizations of their own choosing for the purpose of collective bargaining. Again, these matters are exclusively within the jurisdiction of the Court of Industrial Relations.

Third is the allegation that the Company denied the proposals of the defendant Manila Union for unionization and collective bargaining on the ground of lack of employer-employee relationship between the Company on the one hand and the stevedores servicing its vessels on the other. That being the case, plaintiff National Union theoretically admitted that the Company had committed an unfair labor practice under Section 4(a)(6) of the Industrial Peace Act. Indeed, according to the statement of facts made by the Supreme Court in its decision, after the Company had refused to bargain collectively with the Manila Union, the latter lost no time in filing an unfair labor practice case with the Court of Industrial Relations against the Company. Undoubtedly, unfair labor practice cases fall within the exclusive jurisdiction of the Court of Industrial Relations. Now, in connection with the alleged lack of employer-employee relationship which the Company relied upon in denying the proposal of the Manila Union for collective bargaining, it should be noted that questions involving classification of persons who may have certain attributes of an employee and some characteristics of an independent contractor is peculiarly a labor relations problem because of the economic facts of the relation involved. This also falls within the jurisdictional competence of the Court of Industrial Relations.

Fourth is the allegation that the defendant Manila Union went on a strike after the Company had denied the former's proposals for union recognition and collective bargaining and that on the day following the strike the Company signed a return-to-work agreement with the striking Manila Union as the consideration for the lifting of the strike. Accordingly, the plaintiff National Union theoretically admitted that the Company had recognized the defendant Manila Union as the bargaining agent of all the workers and stevedores servicing its vessels. As a matter of fact, the Supreme Court stated in its decision that the plaintiff National Union, upon its repudiation by the Company, went on a counter-strike to win recognition but this was unsuccessful and failed to accomplish its purpose.

Fifth is the allegation that the Company entered into a return-to-work agreement with the defendant Manila Union. Consequently, the plaintiff National Union theoretically admitted the existence of the terms and conditions contained in the said agreement, one of which bound the Company to the defendant Manila Union to enter into a collective-bargaining contract which would cover, among other things, "terms and conditions of employment" of the stevedores and workers. Under the circumstances, the plaintiff National Union also theoretically admitted the existence of an employer-em-

ployee relationship between the Company, on the one hand, and the stevedores and workers servicing its vessels, on the other.

In the survey of the 1970 decisions of the Supreme Court in labor relations law, I pointed out the consequences of failure to take into account the clarification of the *Suanes* test made in *Insular Sugar Refining Corporation v. Court of Industrial Relations.*[25]

If the truth of the allegations in the complaint or petition were not to be considered as theoretically admitted by the plaintiff or petitioner himself, then it would not only be paradoxical but it would also mislead or confuse the court in determining the question of its jurisdiction over the subject-matter of the case. As succinctly stated by Mr. Justice Jose B.L. Reyes in the 1971 *Canada Dry Bottling Company Employees Association,* the jurisdiction of a court over the subject-matter of a case should not be made to depend on the literal averments of the complaint nor indirectly on the ability of the plaintiff to compose the complaint as to conceal the facts which would divest a court of its jurisdiction, either by the allegation of an unfair labor practice or the existence of an employer-employee relationship in the case of complaints filed in the Court of First Instance or by carefully avoiding any mention of an existing labor or industrial dispute in the case of complaints filed in the Court of Industrial Relations.

It is not amiss to refer to the warning given by the Supreme Court in *Veterans Security Free Workers Union v. Cloribel,*[26] *Federacion Obrera dela Industria Tabaquera v. Mojica,*[27] and *Mindanao Rapid Co., Inc. v. Omandam,*[28] that courts should give a very careful and thoughtful reading of the allegations in the complaint or petition because it is not difficult at all for a plaintiff or petitioner to mask or hide the labor relations nature of a case by the "artful wording" of the complaint or petition. The adroit drafting of pleadings, as earlier stated, is accomplished by muting or avoiding the catch words or catch phrases peculiar to labor relations law or by suppressing the facts which would indicate the existence of a labor or industrial dispute or the presence of an employer-employee relationship. Thus, Mr. Justice Reyes, in the 1971 *Canada Dry Bottling Company Employees* case, praised the lower court for piercing the adroitly drafted complaint and revealing the fact that the acts of the defendants sought to be prevented originated from or were the consequences of the strike against the Company. But the Supreme Court can also express its disappointment, as in the 1971 *Rustan Supervisory Union* case, in the 1970 *Veterans Free Workers Union* case, and in the 1968 *Federacion Obrera* case, on the failure of the trial courts to see that the complaint filed, "for all its artful wording" was sufficient to show

[25] G.R. No. L-19247, May 31, 1963, 8 SCRA 270.
[26] G.R. No. L-26439, January 30, 1970, 31 SCRA 297.
[27] G.R. No. L-25059, August 31, 1968, 24 SCRA 936.
[28] G.R. No. L-23058, November 27, 1971, 42 SCRA 250.

that there existed an industrial dispute between the parties. The Courts of First Instance must be doubly alert, said the Supreme Court, when their attention is called to the true nature of the case, whether by means of a motion to dismiss a complaint, a motion opposing issuance of an injunction, or a motion for dissolution of an injunction prohibiting union activities. The first means was used by a Union and allowed by the Supreme Court in *Edward J. Nell Corporation v. Cubacub*.[29] The second means was availed of by a Union and approved by the Supreme Court in *Leoquinco v. Canada Dry Bottling Company of the Philippines Employees Association*.[30] The third means was used by a Union and approved by the Supreme Court in *Rustan Supervisory Union v. Dalisay*.[31]

Turning back to the 1971 *Manila Stevedoring & General Workers Union* case, what were the material facts suppressed by the plaintiff in its complaint to mask or hide the labor relations nature of the case? There are two: 1) the unfair labor practice case which the Manila Union filed in the Court of Industrial Relations against the Company after the latter had rejected the former's demand for union recognition and collective bargaining, and 2) the consideration for the lifting of the strike and the return-to-work agreement signed between the Company and the defendant Manila Union on the day following the strike: that the Company bound itself to enter into a collective-bargaining agreement. These facts, which the Supreme Court itself found, in addition to those which the plaintiff National Union had theoretically admitted as a consequence of the allegations made in its amended complaint, clearly indicate the labor relations character of the subject-matter of the case filed in the Court of First Instance of Manila, which was beyond its jurisdiction.

But if the Supreme Court has overruled the *Suanes* test by the "actionable wrong" or "relief" sought in the complaint, then this has to be accepted. But there is no clear indication that this is the case. Indeed, in the subsequent 1971 cases on this question, namely, *Leoquinco v. Canada Dry Bottling Company of the Philippines Employees Association*,[32] *Rustan Supervisory Union v. Dalisay and Rustan Pulp and Paper Mills, Inc.*,[33] *Time, Inc. v. Reyes*,[34] and *Union Obrera de Tabaco, Inc. v. Quicho*,[35] the Supreme Court did not apply the "actionable wrong" theory but returned to the *Suanes* test.

I feel that the better rule is that the jurisdiction of the Court of Industrial Relations over the subject-matter of a case is determined solely by the allegations in the complaint or petition, the truth of which is to be considered

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[29] G.R. No. L-20843, June 23, 1965, 14 SCRA 419.
[30] G.R. No. L-28621, February 22, 1971, 37 SCRA 535.
[31] G.R. No. L-32891, April 29, 1971, 38 SCRA 500.
[32] G.R. No. L-28621, February 22, 1971, 37 SCRA 535.
[33] G.R. No. L-32891, April 29, 1971, 38 SCRA 500.
[34] G.R. No. L-28882, May 31, 1971, 39 SCRA 303.
[35] G.R. No. L-25799, August 31, 1971, 40 SCRA 589.

as theoretically admitted by the plaintiff or petitioner until the facts or evidence subsequently presented in the hearing show otherwise.

But in *Mindanao Rapid Co., Inc. v. Omandam*,[36] the last case decided on this issue during the year in review, we find the Supreme Court overturning everything it had said before on this issue. There, the Court stated that the rule that jurisdiction is determined solely by the allegations of the complaint is no longer adhered to because the Rules of Court now permit a motion to dismiss based upon facts which may not even be alleged in the complaint, such as, pendency of another action between the same parties for the same cause, *res judicata*, the statute of limitations. But this, to me, is the exception to the *Suanes* test. Naturally, if a motion to dismiss is based on any of these collateral attacks, then the court must take the matter into consideration.

At any rate, this is the situation on this issue during the year in review. What the Supreme Court will do in its 1972 decisions remains to be seen. All that we can do is to be alert to the views expressed by the members of the Supreme Court on this question.

B. APPEARANCE OF NON-LAWYERS

In the case of *Philippine Association of Free Labor Unions v. Binalbagan Isabela Sugar Company*,[37] the question before the Supreme Court was whether a non-lawyer may recover fees for legal services rendered in an unfair labor practice case.

The records of the case show that the unfair labor practice case was filed by Attorney Cipriano Cid against the respondent Company. The hearing was held in Bacolod City and appearances made in behalf of the dismissed employees were made through Attorney Atanacio Pacis and subsequently by the respondent Mr. Quintin Moning. The lawyers of record filed their respective attorney's lien after the decision of the lower court ordering the reinstatement of the dismissed employees with backwages had become final. For his part, Mr. Moning filed a petition asking for a certain percentage of the backpay award as fees for legal services which he rendered for the employees. This petition was opposed by the lawyers of record on the ground that Mr. Moning is not a lawyer.

In resolving this question, the Court of Industrial Relations ruled that Mr. Moning was entitled to compensation for legal services and awarded him 10% of the backwages. After the motion for reconsideration filed by the lawyers of record was turned down by the Court of Industrial Relations, the question was brought on appeal to the Supreme Court.

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[36] G.R. No. L-23058, November 27, 1971, 42 SCRA 250.
[37] G.R. No. L-23959, November 29, 1971, 42 SCRA 302.

The Supreme Court, without any hesitation, set aside the award given to Mr. Quintin Moning as compensation for professional services rendered in the case. The Supreme Court leaned on Canon 34 of Legal Ethics which condemns payment of attorney's fees for services rendered by a non-lawyer.

The Court also applied Section 5(b) of the Industrial Peace Act which provides that in the proceeding before the Court or Hearing Examiner thereof, the parties shall not be required to be represented by legal counsel and it shall be the duty and obligation of the Court or Hearing Examiner to examine and cross-examine witnesses on behalf of the parties and to assist in the orderly presentation of evidence. From this provision, the Supreme Court held that "the permission for a non-member of the bar to represent or appear or defend in the [Court of Industrial Relations] on behalf of a party litigant does not, by itself, entitle the representative to compensation for such representation."

Comments

The ruling based on Section 5(b) of the Industrial Peace Act is rather disturbing because it asserts categorically that Section 5(b) permits a non-member of the bar to appear in the Court of Industrial Relations on behalf of a party litigant, although he may not claim compensation for services rendered.

Section 5(b) does not do so. The participial phrase "the parties shall not be required to be represented by legal counsel" does not mean that a party litigant may be represented by a non-lawyer in cases before the Court of Industrial Relations. It merely means that the parties may appear by themselves before the Court of Industrial Relations or a Hearing Examiner thereof even if they are not lawyers for the simple reason that they are the parties in interest. However, if they decide to be represented by another person they can only retain the services of a lawyer. But, if a party decides to appear by himself (because the law has foreseen the possibility of a poor laborer unable to retain the services of a lawyer), then Section 5(b) wisely provided that "it shall be the duty and obligation of the Court or Hearing Officer to examine and cross-examine witnesses on behalf of the parties and to assist in the orderly presentation of the evidence." Stated differently, when a party appears before the Court or a Hearing Examiner thereof by himself without legal counsel, it becomes the duty and obligation of the Court or Hearing Examiner to help this non-lawyer party in examining and cross-examining witnesses on behalf of the party and to assist him in the orderly presentation of his evidence because he is a lay-person and not versed in the intricacies of the law and legal procedure.

It bears repetition that Section 5(b) of the Industrial Peace Act, with all due respect to the Supreme Court, does not permit a non-member of the bar to represent a party-litigant.

In this connection, it might not be amiss to state that the practice of the Court of Industrial Relations of allowing non-lawyers to appear as representatives or agents of parties-litigant needs reexamination. And perhaps, the gap in the procedure obtaining in the Prosecution Division of the Court of Industrial Relations in this regard may be filled by analogizing from the provision in Section 5(b) of the Industrial Peace Act. In other words, when an employee or worker files a charge of unfair labor practice in the Prosecution Division and appears without counsel, the Investigating Officer of the Prosecution Division must also aid or assist the employee in the presentation of his case.

C. PRONOUNCEMENT OF DECISIONS, ORDERS OR AWARDS

Section 1 of Commonwealth Act 103 provides that the judges of the Court of Industrial Relations shall act on such matters as the presiding judge may designate and they shall have power to preside over the hearing of cases assigned to each of them and to render decisions thereon.

In *Pagtakhan v. Court of Industrial Relations*,[38] the authority of a judge of the Court of Industrial Relations to issue orders or decisions was questioned when he issued an interlocutory order in a case assigned to him. It appears that the respondent company filed a motion to dismiss the complaint for unfair labor practice filed by its employees. The company argued that on the basis of the evidence presented for the plaintiffs the case does not fall within the jurisdiction of the Court of Industrial Relations. The trial judge issued an order denying the demurrer to the evidence and set the continuation of the hearing for the reception of the evidence of the respondent company. But the latter instead filed a motion for the reconsideration of the order denying the motion for dismissal of the complaint and did not attend the scheduled hearing. On the second date set for the hearing, the respondent company and its counsel were again absent whereupon counsel for the plaintiffs submitted the case for decision on the basis of the evidence already presented. Subsequently, the trial judge granted the relief prayed for by the complainants. To this the respondent filed a motion for reconsideration which the Court of Industrial Relations *en banc* granted ordering the trial judge to receive the evidence of the respondent. Not satisfied with this action of the Court of Industrial Relations, the plaintiffs appealed to the Supreme Court on the question of whether the order of the trial judge denying the motion to dismiss filed by the respondent company can be appealed to the Court of Industrial Relations *en banc*, thereby

[38] G.R. No. L-23867, June 10, 1971, 39 SCRA 455.

suspending the proceeding before the trial judge until the court *en banc* shall have decided the motion for reconsideration.

Speaking through Mr. Justice Calixto O. Zaldivar, the Supreme Court stated that an interlocutory order of a judge of the Court of Industrial Relations is not immediately appealable to the Court of Industrial Relations *en banc*. The reason for this is that a judge of the Court of Industrial Relations, when designated by the presiding judge to hear a case, acts as a trial judge and is empowered to decide the case completely. And the case is terminated there if the losing party does not appeal the said decision to the Court of Industrial Relations by a timely motion for reconsideration filed with the trial judge. In another way of putting it, should a party aggrieved by an order or decision of a trial judge file a motion for reconsideration within the period provided by the rules, then the Court of Industrial Relations sits *en banc* and assumes jurisdiction over the case. As such, it discharges the function of a collegiate appellate court in the sense that it passes upon and decides appeals from the orders and decisions of a trial judge. This means that the order or decision which is the subject of a motion for reconsideration is not merely an interlocutory order but one that has finally disposed off the issues in the case assigned to the trial judge.

D. Enforcement of Decisions, Orders or Awards

In *Philippine Refining Company, Inc. v. Flores*,[39] one of the issues deals with the question of whether the Court of Industrial Relations has the authority to enforce a judgment which had become final more than five years before the petition of the respondent for that purpose was filed. The question, stated differently, involves an analysis of the nature of the petition filed by the respondent. Is it a mere motion for execution falling under Section 23 of Commonwealth Act No. 103? Or is it an independent action to enforce the judgment of the Court of Industrial Relations falling under Section 6, Rule 39 of the Rules of Court?

Mr. Justice Querube C. Makalintal, who prepared the opinion of the Supreme Court, observed that there were other demands in the petition which were not the subject of any previous decision or adjudication in the court below, that one of the prayers of the petition was that the same be considered as a new action, and that it was given its own docket number. On this basis, the Supreme Court concluded that the petition was not a simple motion for execution but an independent action to enforce a previous judgment of the court below coming within the purview of Section 6 of Rule 39 of the Rules of Court. This means that the petitioner had ten years within which to file the action to enforce the judgment of the lower court, as distinguished from a motion for execution of judgment which must be filed within five years from the entry of said judgment.

[39] G.R. No. L-21669, June 30, 1971, 38 SCRA 577.

Comments

Under Section 1, Rule 2 of the Rules of Court, the term "action" means an ordinary suit in a court of justice by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong.

The methods of enforcing decisions, orders or awards of the Court of Industrial Relations as provided in Section 23, Commonwealth Act No. 103, as amended, and Section 6, Rule 39 of the Rules of Court may be, as stated above, through a motion of execution of judgment or an independent action to enforce the judgment. However, under Section 23 of Commonwealth Act No. 103, as amended, an award, order or decision of the Court of Industrial Relations may be enforced by "any other remedy provided by law in respect to enforcement and execution of orders, decisions or judgments of the Court of First Instance." In view of this general provision, the Supreme Court held in the case of *San Miguel Brewery, Inc. v. Court of Industrial Relations*[40] that an award, order or decision of the Court of Industrial Relations may also be enforced by contempt proceedings or any appropriate method under the inherent powers of the Court of Industrial Relations as a court of justice and equity. Presumably this step is to avoid the complexity of inquiring into the nature of the petition filed by the prevailing party who has allowed a considerable amount of time to pass before taking action.

II. UNFAIR LABOR PRACTICES

A. ON THE PART OF THE EMPLOYER

(1) *Interference with exercise of the rights of employees*

The case of *Insular Life Assurance Co., Ltd. Employees Association v. Insular Life Assurance Co., Ltd.*,[41] brings into focus for the first time the question of whether management utterances and publications are contrary to the provisions of Section 4(a)(1) of the Industrial Peace Act, which prohibits an employer from interfering with, restraining or coercing employees in the exercise of their rights of unionization, collective bargaining and concerted activities.

The question is not easy because it involves the constitutionally protected freedom of expression. Furthermore, the Industrial Peace Act does not prohibit management from expressing its ideas or opinions about union-

[40] G.R. No. L-4634, April 28, 1952.
[41] G.R. No. L-25291, January 30, 1971, 37 SCRA 244.

ization, collective bargaining and concerted activities. Courts are thus called upon to balance the freedom of management, on the one hand, and the employees, on the other, to express themselves on unionization, collective bargaining and concerted activities.

In the 1971 *Insular Life Assurance* case, the main controversy revolved on the two letters which the President of the respondent company sent to each of the strikers. The first letter, dated May 21, 1958, quoted verbatim, is as follows:

"We recognize it is your privilege both to strike and to conduct picketing.

"However, if any of you would like to come back to work voluntarily, you may:

"1. Advise the nearest police officer or security guard of your intention to do so.
"2. Take your meals within the office.
"3. Make a choice whether to go home at the end of the day or to sleep nights at the office where comfortable cots have been prepared.
"4. Enjoy free coffee and occasional movies.
"5. Be paid overtime for work performed in excess of eight hours.
"6. Be sure arrangements will be made for your families."

The second letter, dated May 31, 1958, is also quoted verbatim, as follows:

The first day of strikes was 21 May 1958.
"Our position remains unchanged and the stirke has made us even more convinced of our decision.
"We do not know how long you intend to stay out, but we cannot hold your positions open for long. We have continued to operate and will continue to do so with or without you.
"If you are still interested in continuing in the employ of the Group Companies, and if there are no criminal charges pending against you, we are giving you until 2 June 1958 to report for work at the home office. If by this date you have not yet reported, we may be forced to obtain your replacement.
"Before, the decisions was your to make.
"So it is now."

When this question reached the Supreme Court, the respondent Company argued that the letters in question were sent to the strikers in the exercise of its constitutional freedom to express itself on the industrial dispute and the motives of the strike. The Supreme Court turned down this contention on several grounds and ruled that the letters sent to the strikers constituted an unfair labor practice.

Comments

The first reason advanced by the Supreme Court to support its conclusion is that the letters in question were directed by the company to the striking employees individually without coursing them through the Unions representing the strikers. To buttress this holding, the Supreme Court quoted from the case of *National Labor Relations Board v. Montgomery Ward & Co.*,[42] where the Ninth Circuit Court of Appeals ruled that "the act of an employer in notifying *absent* employees individually during a strike following unproductive efforts at collective bargaining that the plant would be operated the next day and that their jobs were open for them should they want to come in has been held to be an unfair labor practice as an active interference with the right of collective bargaining through dealing with the employees individually instead of through their collective bargaining representatives."[43]

It is doubtful that the American case cited by the Supreme Court is applicable to the 1971 *Insular Life Assurance* case for the simple reason that there is no finding of fact in the court below nor any reference in the decision of the Supreme Court to show that the employees were absent during the strike. Indeed, the decision in the 1971 *Insular Life Assurance* case indicates that the letters in question were sent to each of the striking employees who continued on the picket lines during the whole period of the strike. In the case of absent employees during a strike, it stands to reason that any communication to them from management must be through the collective-bargaining union. But if the employees are not absent but are actually at the picket lines during the entire strike, then there seems to be no cogent reason why the letters should have to be "coursed through the Unions." Since the strikers were at the picket lines, serving the letters on them directly is hardly an attempt to undermine the bargaining unions.

While there is no question that the matters expressed by management in both letters constituted a 4(a)(1)-unfair labor practice, it would seem to me that the second reason given by the Supreme Court to support its conclusion is better. Here the Supreme Court dwelt on the promise of physical and economic benefits contained in the first letter and the threat of loss of job contained in the second letter. Indeed, as a result of the first letter, not a few unionists were influenced to desert the picket lines. And as a consequence of the second letter, the rest of the unionists decided to give up entirely the strike. Both letters are classic examples of union busting. This is a direct interference with the exercise of the employees of their right to engage in concerted activities for the purpose of collective bargaining.

Under prevailing jurisprudence, the appeal of an employer to his constitutionally protected freedom of expression cannot prevail where his utter-

[42] 133 F.2d 676 (1943), 146 A.L.R. 1045.
[43] Emphasis supplied.

ances and publications contain promises of benefit, threats of loss of jobs, or economic reprisals. This is interference with the exercise of the rights of the employees to unionization, collective bargaining and concerted activities because the employees are coerced to return to their jobs at the sacrifice of these rights.

(2) *Discrimination against employees on grounds of union affiliation or union activities*

In *Insular Life Assurance Co., Ltd. Employees Association v. Insular Life Assurance Co., Ltd.*,[44] the Unions jointly raised as error on the part of the Court of Industrial Relations its failure to hold the respondent Companies guilty of unfair labor practice, consisting of discriminatory acts against the striking unionists in the matter of their readmission after they had given up the strike.

It appears that the respondent Companies imposed as a condition for readmission of the striking employees that none of them must have been the subject of a criminal complaint filed by the respondent Companies during the period of the strike. But the Supreme Court found that: 1) when the strikers reported for work, 34 officials and Union members were refused readmission by the respondent Companies on the alleged ground that they had committed acts inimical to the respondent Companies, despite the fact that they were able to secure their respective clearances of the criminal charges previously filed against them, 2) many non-strikers who also had pending criminal charges against them arising from the same incidents on which the criminal charges against the strikers were based, were readily re-admitted without having to secure clearances, 3) the respondent Companies separated the active from the less active unionists on the basis of their militancy, or lack of it, at the picket lines and refused readmission to unionists belonging to the first category even after they were able to secure clearances with respect to the criminal charges filed against them, and 4) not a single Union officer was rehired.

The Supreme Court ruled that these facts indubitably show that the respondent Companies had engaged in a culpable violation of Section 4(a)(4) of the Industrial Peace Act by discouraging union membership in the process of rehiring.

(3) *Dismissal of employees based on refusal to join union based religious restriction*

The decision in *Tamayo v. Manila Cordage Workers Union*,[45] reiterates the holding in the case of *Lakas ng Manggagawang Makabayan v. Abiera*[46]

[44] G.R. No. L-25291, January 30, 1971, 37 SCRA 244.
[45] G.R. No. L-29385, March 15, 1971, 38 SCRA 21.
[46] G.R. No. L-29474, December 19, 1970, 36 SCRA 437.

that it is an unfair labor practice where employees who are members of a religious sect which prohibits affiliation of its members in any labor organization are dismissed from employment for severing their union membership notwithstanding a closed-shop arrangement in the collective-bargaining agreement.

In the 1971 *Tamayo* case, the plaintiffs became members of the Manila Cordage Workers Union pursuant to the union security clause of the collective-bargaining agreement signed between the Company and the Union. Not long after, the plaintiffs, upon the authority of Section 4(a)(4) of the Industrial Peace Act, as amended by Republic Act No. 3350, resigned from the Union because the religious sect to which they belong prohibits its members from joining or affiliating with any labor organization.

Upon being informed of the matter, the Union asked the Company to terminate the employment of the plaintiffs in accordance with the union security clause in the existing collective-bargaining agreement.

The dismissed employees filed a complaint in the Court of First Instance of Manila. Defendant moved to dismiss the case for lack of jurisdiction on the part of the trial court. The motion was denied on the ground that it does not involve an unfair labor practice.

On appeal, the Supreme Court, speaking through Mr. Justice Julio V. Villamor held that the dismissal of employees, who are members of a religious sect prohibiting affiliation of its members in any labor organization, for severing their union membership despite a closed-shop arrangement embodied in the collective-bargaining agreement is an unfair labor practice falling within the exclusive jurisdiction of the Court of Industrial Relations. The Supreme Court invoked the reasons expressed by Mr. Justice Fernando in the 1970 *Lakas ng Manggagawang Makabayan* case.

(4) *Discrimination to discourage union membership*

The case of *H. Aronson & Co., Inc., et als. v. Associated Labor Union*,[47] involved a complaint for unfair labor practices under Section 4(a)(1), (2), and (3) of the Industrial Peace Act.

The facts show that H. Aronson & Company was incorporated in 1920 with a corporate life of 50 years, expiring on May 27, 1970. In 1958 a majority of its employees became members of respondent Associated Labor Union. Sometime thereafter, the respondent Union asked the Company to negotiate a collective-bargaining agreement with it. After this was turned down, the Union went on a strike. It was only after some time that the Company agreed to the demands of the Union and signed a collective-bargaining agreement.

[47] G.R. No. L-23010, July 9, 1971, 40 SCRA 7.

In January of 1960, the company notified its employees that their employment would be terminated effective July 31, 1961 on the ground that the company would be dissolved on that date because of "poor business". In the meanwhile, the original articles of incorporation of the company was amended shortening the corporate life by nine (9) years to July 31, 1961, instead of the original expiration date on May 27, 1970. Within a month of the amendment of the original articles of incorporation of H. Aronson & Company., Inc. two new companies—Medel Office Materials & Paper Co., Inc. and Photo Materials Co., Inc.—were incorporated and took over the business of H. Aronson & Co., Inc. lock, stock and barrel, including the business site.

On July 15, 1961 all the employees of H. Aronson & Co., Inc. who were members of the respondent union were ordered to stop working notwithstanding the fact that the notice terminating their services would take effect at the end of that month. On the other hand, the employees of H. Aronson & Co., Inc. who were not members of the respondent Union were allowed to continue working and after the expiration of the corporate life of H. Aronson & Co., Inc. were all absorbed and employed by the two newly organized corporations.

On the basis of these facts, the Supreme Court affirmed the decision of the lower court that the discrimination against the respondent employees was not due to the alleged "poor business" of H. Aronson & Co., Inc. because, as a matter of fact, it was enjoying "better business" than in the preceding two years. The Supreme Court held that there was discrimination of the kind condemned under Section 4(a)(4) of the Industrial Peace Act, that is to say, discrimination to discourage union membership.

Comments

While the Supreme Court is correct in holding the employers guilty of unfair labor practice under Section 4(a)(4) of the Industrial Peace Act, the decision is not clear concerning the requisites to support a finding of violation of Section 4(a)(4).

Under the Industrial Peace Act, a finding of the violation of this provision must comply with the following requisites:

1) The aggrieved persons must be "employees" within the meaning of that term as defined in Section 2(d),
2) The aggrieved employees must be in the lawful exercise of their rights under Section 3, and
3) The discriminatory act of the employer tends to encourage or discourage union membership pursuant to Section 4(a)(4).

There is no question as to the first two requisites. A reading of the decision in the 1971 *Aronson* case shows that these requisites were met al-

though there is no specific portion of the decision where they were explicitly considered.

However, the Supreme Court did not consider the third requisite clearly. The Court merely glossed over this requisite by stating that "in the light of the facts of the case the shortening of the corporate life of H. Aronson & Co., Inc. and the subsequent incorporation of the other two companies were part and parcel of a plan hatched to accomplish the dismissal of employees." This, however, is misleading because it would now appear that all types of dismissal of employees are prohibited by Section 4(a)(4) of the Industrial Peace Act. This, of course, is not the case. Section 4(a)(4) does not outlaw all discriminations as unfair labor practices. Congress intended to proscribe only discriminatory acts designed to encourage or discourage membership in any labor organization. Even this type of illegal discriminatory acts are limited to those which have to do with hire or tenure or any term or condition of employment. Beyond this, an employer is free to discriminate against his employees subject only to his legal responsibility under existing welfare legislation.

B. SCOPE OF "UNFAIR LABOR PRACTICE"

It looks like the term "unfair labor practice" is going to be another problem-area in labor relations law in this jurisdiction, in view of the stand taken by the Supreme Court on the scope of this term.

In the case of *Shell Oil Workers Union v. Shell Company of the Philippines, Ltd. and Court of Industrial Relations*,[48] the Supreme Court, after correctly holding that a collective-bargaining agreement may limit management prerogative, held that the failure of the Company to live up to the terms of a collective-bargaining agreement constitutes an unfair labor practice.

Comments

Are violations of the terms and conditions of collective-bargaining agreements unfair labor practices?

Section 4(a)(6) of the Industrial Peace Act states that it shall be unfair labor practice for an employer to refuse to bargain collectively with the bargaining agent of his employees, subject to the provisions of Sections 13 and 14.

Under this provision, it is very doubtful that the respondent company's failure to live up to the terms and conditions of the collective-bargaining agreement is a violation of its statutory duty to bargain collectively. The

[48] G.R. No. L-28607, May 31, 1971, 39 SCRA 276.

respondent Company did not refuse to bargain collectively with the Union. The Supreme Court itself found as a matter of fact that the Company and the Union had successfully negotiated a collective-bargaining agreement where the Company recognized the security guards as part of the bargaining unit and agreed to the work and wage schedules of the guards as proposed by the Union.

The confusion arises in equating *non-compliance* with the terms and conditions of a collective-bargaining agreement with *refusal* to bargain collectively.

Congress has wisely limited the scope of the term "unfair labor practice" in Section 2(i) of the Industrial Peace Act to those expressly listed in Section 4(a) and (b), no more than six in the case of employers, and no more than four in so far as labor organizations are concerned. The obvious intention of Congress here is to prevent any expansion of the term "unfair labor practice".

Since Section 4(a) and (b) and almost all the other sections of the Industrial Peace Act were copied verbatim from the Wagner Act, then it is not amiss to refer to the latter's legislative history concerning this particular problem. In the enumeration of the unfair labor practices in the bill, which later became the Wagner Act, non-compliance with the terms and conditions of a collective-bargaining agreement was included in the list of unfair labor practices. But after further deliberation on the matter, Congress excluded it when the bill was finally approved because non-compliance with the terms and conditions of a collective-bargaining agreement was essentially a breach of contract, and, for this reason, the procedure for the trial of unfair labor practice cases therein provided would simply be inadequate to safeguard whatever rights are involved.[49] As a result of this deliberate Congressional policy, courts in the United States have since ruled that violations of the terms and conditions of collective-bargaining agreements are not unfair labor practices within the statutory meaning of that term, as held in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation.*[50] This decision was later applied in *Independent Petroleum Workers of New Jersey v. ESSO Standard Oil Company.*[51]

But let us also analyze the law on this issue. In the first place, Section 2(i) of the Industrial Peace Act explicitly states that the term "unfair labor practice" as used in the Industrial Peace Act means any unfair labor practice listed in Section 4. This is a meaningful definition because Section 2(i) does not use the phrase "including but not limited to", as this is used, for example, in Section 5(c). Thus, courts are not at liberty to imply or

[49] H.R. Conference Report No. 510, 80th Congress (U.S.), First Session, 42.
[50] 348 U.S. 437 at 443, 99 L.Ed. 510 at 513, 75 S.Ct. 489 at 492 (1955).
[51] 235 F.2d 401 at 403 (1956).

infer any unfair labor practice from those expressly listed in Section 4. *Expressio unius est exclusio alterius.* Otherwise, many other acts which Congress never intended to be unfair labor practices would, by judicial legislation, fall within the scope of this term, giving rise to interminable differences of interpretations and opinions which can only lead to industrial unrest rather than industrial peace.

In the second place, Section 4(a)(6) and Section 4(b)(3) dealing with refusal to bargain collectively makes express reference to the provisions of Sections 13 and 14 of the Industrial Peace Act. Section 13 defines the duty to bargain collectively by separating it into two distinct aspects: 1) the performance of the mutual obligation to meet and confer promptly and expeditiously and in good faith for the purpose of negotiating an agreement with respect to wages, hours, and/or other terms and conditions of employment and of executing a written contract incorporating such agreement if requested by either party, and 2) the performance of the mutual obligation to meet and confer promptly and expeditiously and in good faith for the purpose of adjusting any grievance or question arising under such agreement. It is the second aspect of the duty to bargain collectively that poses some difficulty especially in the light of the ruling in *Republic Savings Bank v. Court of Industrial Relations,*[52] that "collective bargaining does not end with the execution of the agreement [because] it is a continuous process." While this is correct, a violation of the terms and conditions of a collective bargaining agreement, standing alone, is not an unfair labor practice. To be so, there must first be a written notice served on the other party to negotiate an alleged violation of the collective-bargaining agreement, as provided in Section 14(a) of the Industrial Peace Act. This is precisely the reason why Section 4(a)(6) and Section 4(b)(3), referring to the unfair labor practice of refusing to bargain collectively, both carry a reference to Sections 13 and 14.

There is nothing in the decision in the 1971 *Shell Oil Workers Union* case nor in the 1968 *Security Bank Employees Union* case and the 1967 *Republic Savings Bank* case to show that there was a prior request to negotiate the question of non-compliance with the terms and conditions of the collective-bargaining agreement. Unless there is a written notice to negotiate a question arising under a collective-bargaining agreement served by the aggrieved party on the other party who refuses to meet and confer promptly and expeditiously and in good faith with the former, non-compliance with the terms and conditions of a collective-bargaining agreement is not a violation of the duty to bargain collectively, whether in its first or second statutory sense. In such a case, there is only a plain breach of contract for which the Industrial Peace Act provides a different remedy, that

[52] G.R. No. L-20303, September 27, 1967, 21 SCRA 226.

is to say, an action in the Court of Industrial Relations for the interpretation and/or enforcement of the collective-bargaining agreement, under Sections 13 and 16.

As mentioned earlier, respondent Company could not have violated its duty to bargain collectively because it did bargain with the Union resulting in the execution of a collective-bargaining agreement between the parties where the Company agreed to the proposals of the Union. If the Company subsequently violated the terms of the collective-bargaining agreement and no request for collective bargaining of the violation is made by the aggrieved party, then this is not refusal to bargain collectively, especially because there is nothing in the decision showing that there was a prior request to negotiate the matter, as provided in Section 14(a) of the Industrial Peace Act.

III. UNFAIR LABOR PRACTICE CASES

A. Procedure in the Hearing of ULP Cases

In 1966, in *East Asiatic Company, Ltd. v. Court of Industrial Relations*,[53] the Court of Industrial Relations condemned the Company for unfair labor practice and ordered *inter alia* the reinstatement of the illegally dismissed employees with backwages from the date of dismissal to the date of actual reinstatement.

When the execution of the court's decision came, a question arose as to the computation of the amount of backpay to be awarded to the employee. The Court of Industrial Relations split three-to-two on the question of the competency of the evidence presented by the employee in support of his computation of the backpay award. Ultimately, the question reached the Supreme Court in the case of *East Asiatic Company, Ltd. v. Court of Industrial Relations*.[54]

The Supreme Court, speaking through Mr. Justice Antonio P. Barredo, ruled that the determination of the amount of backpay ordered in the 1966 unfair labor practice case is "part and parcel of the whole proceeding." Since the question of backpay is an incident of the parent unfair labor practice case, the Supreme Court properly ruled that the procedure in the hearing of unfair labor practice cases provided in Section 5(b) and (c) of the Industrial Peace Act must also be observed in the determination of the amount of backpay to be awarded to illegally dismissed employees. According to Mr. Justice Barredo, "much of the delay in the disposition of this case could have been avoided had the Industrial Court adopted a more practical and less technical approach to the problem before it, as envisioned by the law. . . . In that manner, all of [the] questions vexing the parties

[53] G.R. No. L-17037, April 30, 1966, 16 SCRA 820.
[54] G.R. No. L-29068, August 31, 1971, 40 SCRA 521.

and the court could have been avoided or at least minimized. After all, it is the long lay-off that creates problems not only for the employer with regard to how much has to be paid in backwages but also, and this is worst, for the discharged employee or worker as to whom naturally the damage is always bound to be beyond complete repair since during the uncertain period of lay-off, he and his family have to undergo the difficulties, hardships and vicissitudes of unemployment until he can have some kind of earning elsewhere."

Comments

Section 5(a) and Section 5(b) of the Industrial Peace Act provides the procedure for the hearing of unfair labor practice cases. These provisions also mention the unusual features of such procedure: 1) the exclusive jurisdiction of the Court of Industrial Relations over unfair labor practice cases is not to be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise, 2) in the exercise of this jurisdiction, the Court of Industrial Relations is prohibited from holding any pre-trial procedure or resorting to the mediation or conciliation procedures provided in Section 4 of Commonwealth Act No. 103, and 3) in the exercise of this jurisdiction, the rules of evidence prevailing in the regular courts are not controlling but on the contrary all reasonable means shall be used to ascertain the facts of each case with dispatch and objectivity, without regard to technicalities of law or procedure.

The reason for the unusual features of the procedure in unfair labor practice cases is found in the public policy of eliminating the causes of industrial unrest and ventilating unfair labor practices in order to undo both the public and private harm resulting from such illegal practices. Stated differently, the promotion of a sound and stable industrial peace cannot be achieved if the causes of industrial unrest are not fully unmasked, remedied and eliminated. As I stated in the survey of the 1970 decisions of the Supreme Court on this question,[55] the rationale for this unusual procedure is that unfair labor practice cases involve much more than clashes of private interests. It is for this reason that the Industrial Peace Act recognizes only two instances where an unfair labor practice case may be dismissed: 1) when, as a result of a hearing, no person named in the complaint has engaged in or is engaging in any unfair labor practice, and 2) when the plaintiff himself withdraws the complaint at any time prior to the decision of the case.

The only means recognized by the Industrial Peace Act for the adjustment or prevention of unfair labor practices is found in Section 5(c) of the Industrial Peace Act. Once a complaint for unfair labor practice is

[55] 46 PHIL. L. J. 1. (1971).

filed by the Prosecution Division of the Court of Industrial Relations, there is no room for any means of adjustment or prevention other than that provided in Section 5(c), even though such other means have been established by agreement, code, law or otherwise. Thus, for example, the Court of Industrial Relations can assert jurisdiction over an unfair labor practice case despite a concurrent arbitration proceeding under the Arbitration Law.[56] And if the unfair labor practice complaint involves refusal to bargain collectively under either Section 4(a)(6) or Section 4(b)(3) of the Industrial Peace Act, then the only means of mediation and conciliation allowed would be that provided in Section 18 of the Industrial Peace Act.

Up to 1970, it was not unusual to come across unfair labor practice cases which have been treated as ordinary cases subject to the vicissitudes of legal technicalities and procedure. For example, in *Central Azucarera Don Pedro v. Don Pedro Security Guards Union*[57] and *Luzon Glass Factory v. Court of Industrial Relations*,[58] while the appeals in both cases were pending resolution, the parties filed separate motions to withdraw their respective appeals on the ground that the parties have arrived at an amicable settlement of the unfair labor practices involved in both cases. Surprisingly, the Supreme Court agreed and held that the amicable settlements reached by the parties have rendered both cases moot and academic. Another illustration is *Pasumil Workers Union v. Court of Industrial Relations*,[59] where the Supreme Court thought that Article 2028 of the Civil Code and Rule 20, Section 1, of the Rules of Court, both directing the parties and attorneys to consider the possibility of an amicable settlement, and Rule 21, Section 3, of the Rules of Court, directing courts to conduct pre-trial, are permissible in the hearing of unfair labor practice cases. In my surveys of the 1964 and 1968 decisions of the Supreme Court on this question,[60] I called the attention of the bench and the bar to the unique procedure in the hearing of unfair labor practice cases.

It is gratifying to note that in 1970 the Supreme Court started to consider the third unusual feature of the procedure in the hearing of unfair labor practice cases. Speaking through Mr. Justice Barredo in *Kapisanan ng mga Manggagawa sa Alak v. Hamilton Distillery Company*,[61] the Supreme Court held that the rule on "newly discovered evidence" applied in proceedings before the regular courts is not binding upon the Court of Industrial Relations by virtue of Section 20 of Commonwealth Act No. 103 which

[56] Rep. Act No. 876 (1953).
[57] G.R. No. L-21610, March 15, 1968, 22 SCRA 1053.
[58] G.R. No. L-23319, October 7, 1968, 25 SCRA 437.
[59] G.R. No. L-19628, April 30, 1964, 10 SCRA 817.
[60] 40 PHIL. L. J. 1 (1965) and 44 PHIL. L. J. 1 (1969).
[61] G.R. No. L-23714, June 30, 1970, 33 SCRA 887.

expressly removes the labor court from the rigid technicalities of evidence applied in ordinary courts.[62]

B. DISCOVERY PROCEDURES

The 1971 *East Asiatic Company* case, gave the Supreme Court another opportunity to emphasize the policy of Section 5(b) of the Industrial Peace Act of removing the Court of Industrial Relations from the technicalities of law and procedure in the hearing of unfair labor practice cases.

The "record of the case," said a very disappointed Court, shows an "unexplainable indifference" on the part of the trial judge to the technical maneuvers of the parties[63] and a "deplorable delay" of almost two years in acting on the motion filed by the illegally dismissed employee for the computation of the backwages ordered by the trial court.[64] Expressing the view of the Court, Mr. Justice Barredo said that the indifference of the trial judge to the resort of the parties to legal technicalities was not in keeping at all with the special procedure for unfair labor practice cases laid down by Section 5(b) and (c) of the Industrial Peace Act. Thus, instead of requiring the employer to reveal the material facts pertinent to the computation of the backwages due the illegally dismissed employee on the basis of the company records, the trial judge merely waited for the employee to submit evidence thereon, only to disregard it later as incompetent on the basis of the strict rules of evidence applicable in ordinary courts.

Concerning the undue delay of two years, the Supreme Court attributed this to the failure of the trial judge to appreciate the unusual features of the procedure for the hearing of unfair labor practice cases, particularly the provision of Section 5(b) of the Industrial Peace Act that the rules of evidence prevailing in the regular courts shall not be controlling and that all reasonabe means shall be used to ascertain the facts of each case with dispatch and objectivity, without regard to technicalities of law or procedure. Mr. Justice Barredo pointed out that it was a grievious error on the part of the trial judge when he ignored the petitioner of the employer or admission by adverse party and the reply thereto filed by the employee and instead required each party to establish their respective claims by facts which each one knew was very well within his own peculiar knowledge. According to Mr. Justice Barredo, the discovery procedures authorized by the Rules of Court are by their very nature suitable to the hearing of the cases

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[62] The correct statutory reference, however, is Section 5(b) of the Industrial Peace Act since that case involves an employer unfair labor practice proscribed in Section 4(a) thereof. At any rate, Section 20 of Commonwealth Act No. 103 and Section 5(b) of the Industrial Peace Act are similar in so far as the policy of doing away with the rigid technicalities of evidence in unfair labor practice cases are concerned.

[63] 40 SCRA at 541.

[64] 40 SCRA at 541.

falling within the jurisdiction of the Court of Industrial Relations since "the main objective of discovery is to enable one party to acquire knowledge of relevant facts which otherwise would be in the peculiar knowledge of the adverse party alone." As a matter of fact, continued Mr. Justice Barredo, under "the broad control that the Court of Industrial Relations has over procedural matters and in order to expedite proceedings and go directly to the substantial merits of the claims of the parties, it can adjust and modify the application of the modes of discovery in cases before it accordingly as the demands of the particular situation before it may require." Stated differently, the discovery procedures are allowed by Section 5(b) of the Industrial Peace Act which gives authority to the Court of Industrial Relations, in the exercise of its jurisdiction, to disregard the strict rules of evidence prevailing in the regular courts and to avail itself of all reasonable means of speedily and objectively ascertain the facts in each case without regard to technicalities of law or procedure.

Now, what is discovery and what are the different discovery procedures? In a lecture entitled "Discovery: Scope, Techniques and Procedures," which then Solicitor General Barredo delivered in the *Institute on Trial Techniques and Procedures,*[65] sponsored by the Division of Continuing Legal Education of the U.P. Law Center in 1967, he defined discovery as the means by which one party in an action is enabled to obtain, before trial, knowledge of relevant facts and material evidence peculiarly in the possession of the adverse party. According to him, there are two types of discovery procedures, namely, the partial modes of discovery, and the specific modes of discovery. Since this is not the place to discuss what these semi-discovery procedures and specific modes of discovery are, I would like merely to recommend for your reading Mr. Justice Barredo's paper.

In the 1971 *East Asiatic Company* case, the employer tried to use the discovery procedure of Admission by Adverse Party under Rule 26 of the Rules of Court for the purpose of proving the interim earnings of the illegally dismissed employee in the computation of the backwages ordered by the trial court. Instead of complying with the request, the employee interposed technical objections to it. After faulting the trial court for completely ignoring both the request and the reply thereto and for not making any mention thereof in its final order,[66] Mr. Justice Barredo characterized the error of the trial court as the result of ignorance of the import of Section 5(a), (b) and (c) of the Industrial Peace Act in the hearing of unfair labor practice cases.[67] According to Mr. Justice Barredo the Court of Industrial Relations does not act merely as a referee in the hearing of cases

[65] INSTITUTE OF TRIAL TECHNIQUES AND PROCEDURES, PROCEEDING OF 1967, U.P. LAW CENTER, pp. 3-37.

[66] 40 SCRA at 543.

[67] 40 SCRA at 543-544.

under Section 5(b) of the Industrial Peace Act, like the regular courts in ordinary cases, but must take an active part in ascertaining the facts of a case by using every reasonable means for that purpose. It is incumbent on the Court of Industrial Relations to take the necessary steps "to compel the employer to cooperate with it by being candid and frank about such facts and not to hide behind the usual cloak of the technicality that it is [the respondent employee's] exclusive responsibility to establish his claim. Under the law, such responsibility for the discovery of the material facts is not of the worker or employee alone but of the employer, and, in a sense, of the Court, as well." [68]

C. TOTALITY OF CONDUCT TEST

In the case of *Insular Life Assurance Co., Ltd. Employees Association v. Insular Life Assurance Co., Ltd.*,[69] the principal issue involved two letters which the president of the company sent to each striking employee without coursing them through the bargaining union.

The first letter expressed the company's sympathy towards the cause of unionization and collective-bargaining. However, he also asked the striking employees to give up their strike promising those who return to work free meals within the office, comfortable cots for those who decide to sleep in the office, free coffee and movies, and overtime pay. The second letter expressed the company's position that the strike was illegal and threatened the striking employees that they would be replaced in case they did not report for work on a given date.

The question was whether those letters had interfered with the exercise of the right of the employees to engage in concerted activities when they gave up their strike and returned to their work. The respondent Company argued that the real reason why the strikers returned to work was due to the injunction order issued by the Court of First Instance of Manila and not the letters of the company president.

The Supreme Court correctly ruled that the contention of the respondent Company was without merit. The Court reasoned that the writ of injunction issued by the Court of First Instance of Manila cannot alter the fact that the two letters sent by the company president to the individual strikers were intended to and indeed interfered with the exercise of the right of the employees to engage in lawful concerted activity. Besides, continued the Court, the two letters should not be considered by themselves alone but should be read in the light of the preceding and subsequent circumstances surrounding them according to the totality of conduct doctrine.

[68] 40 SCRA 521 at 534 and 436.
[69] G.R. No. L-25291, January 30, 1971, 37 SCRA 244.

Comments

I would like to pick up the use of the "totality of conduct" doctrine by the Supreme Court. I feel that unless this doctrine is placed in its proper perspective, the manner in which it was applied by the Supreme Court might cause confusion.

Just what is the "totality of conduct" doctrine? The Supreme Court quoted Rothenberg, who explained that the culpability of the employer's remarks must be evaluated, not only on the basis of their implicit implications, but also to be appraised against the background of, and in conjunction with, collateral circumstances because expressions of an opinion by an employer, though innocent in themselves, are frequently culpable in the light of the circumstances under which they were uttered, the history of the particular employer's labor relations or anti-union bias or because of their connection with an established collateral plan of coercion or interference.

In simple terms, this doctrine means that even though expressions of opinion by an employer on unionization, collective bargaining and concerted activities do not by themselves interfere with, restrain or coerce employees in the exercise of their rights under Section 3 of the Industrial Peace Act, such opinions may still constitute a 4(a)(1)-unfair labor practice in the light of his total conduct.

In view of the express findings by the Supreme Court that the letters intrinsically or inherently interfered with the rights of the striking employees (the first letter contained promises of benefits to the employees in order to undermine the union and the strike while the second letter contained threats of loss of jobs), then there is no need to apply the "totality of conduct" doctrine. To do so, as in the case under review, can only cause confusion.

The opinion of Rothenberg and the decision in *National Labor Relations Board v. Virginia Electric & Power Company,*[70] which the Supreme Court cited to support its use of this doctrine, state that the "totality of conduct" doctrine is to be applied only when the employer's expressions of opinion are innocent in themselves. Thus, if the employer's expressions of opinion contain no promises of benefit or threats of economic reprisal or loss of job, then and only then may such expressions of opinion be subjected further to the "totality of conduct" test when there is a reasonable doubt as to the adverse effect of such opinions or utterances on the rights of the employees to unionization, collective bargaining and concerted activities.

The reason for this is that many single acts of the employer when taken individually or separately seem unimportant but when summed up and viewed synoptically places the otherwise innocent expressions of opinion by the

[70] 314 U.S. 469, 86 L.Ed. 348, 62 S.Ct. 344 (1941).

employer in the 4(a)(1)-unfair labor practice category. But if, on the other hand, the employer's expressions of opinion, whether oral or written, are by themselves interferences with, coercive or restrictive of the exercise of the employee's rights guaranteed in Section 3 of the Industrial Peace Act, notwithstanding that such opinions may give the impression that the employer is sympathetic to the cause of unionization, concerted activities and collective bargaining, as in the 1971 *Insular Life Assurance* case, then the culpability of the employer need not be examined in the entire complex of conduct of an employer. Obviously, there is no need for this test in reaching a decision.

The danger attendant to the manner in which the Supreme Court used the totality-of-conduct test is that an employer's utterance or publication which is implicitly a 4(a)(1)-ULP may escape condemnation if the history of the particular employer's labor relations does not show anti-union bias or, as Rothenberg says, any established plan of coercion or interference.

D. THE FORD TEST

In the 1971 *Insular Life Assurance Employees Association* case [71] the Supreme Court used the case of *National Labor Relations Board v. Ford*[72] as authority for its ruling that the success of the employer's interference with the exercise of the rights of the employees is not the criterion in determining whether the employer has committed an unfair labor practice under Section 4(a)(1) of the Industrial Peace Act. While the Supreme Court is correct in ruling that "interference constituting unfair labor practice will not cease to be such simply because it was susceptible of being thwarted or resisted, or that it did not proximately cause the result intended," I feel that the *Ford* case is hardly the authority to support this ruling.

Comments

The *Ford* test cited by the Supreme Court is as follows:

> The test of whether an employer has interfered with and coerced employees within the meaning of subsection (a)(1) is whether the employer has engaged in conduct which it may reasonably be said tends to interfere with the free exercise of employees' rights under Section 3 of the Act, and it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a reasonable inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining.

[71] See fn. 69.
[72] 170 F.2d 735 (1948).

The test enunciated in the *Ford* case has nothing to do with the proposition that there can be a culpable violation of the right of the employees to strike even though the interference is not successful. It is a test for an entirely different matter.

In the *Ford* case, the employer contended that he cannot be condemned of unfair labor practice because the evidence on the record fails to show that any employee was *in fact* interfered with in the exercise of his rights. But the Sixth Circuit Court of Appeals did not think that such *direct* evidence of interference necessary for a finding of unfair labor practice "if there is reasonable inference that the anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining."

The *Ford* test determines only the nature of the evidence necessary for a finding of culpable violation of the exercise of the rights of the employees when the employer has or has no anti-union conduct or background. Simply stated, the Ford test means that if an employer charged with a 4(a)(1)-ULP has an anti-union background, then *indirect* evidence is enough to prove culpable violation of Section 4(a)(1) of the Industrial Peace Act. Thus, in a situation like this, an employer may be culpable of interfering with, restraining or coercing employees in the exercise of their rights guaranteed in Section 3 by evidence that he has engaged in conduct which reasonably tends to interfere with, restrain or coerce the employees in the free exercise of such rights. The Sixth Circuit Court of Appeals held that it is reasonable to infer that the presence of the employer's anti-union background or conduct has an adverse effect on the free exercise of the rights of the employees guaranteed in the Industrial Peace Act.

But if there is no anti-union background on the part of the employer, then it is harder to prove his culpability under Section 4(a)(1) of the Act, because in a situation like this, *direct* evidence is necessary to prove that the employees were in fact interfered with, coerced or restrained by the employer in the exercise of their rights in Section 3 of the Industrial Peace Act.

E. Conclusiveness of Findings of Fact

In reviewing the findings of fact of the Court of Industrial Relations in *East Asiatic Company, Ltd. v. Court of Industrial Relations*,[73] the Supreme Court stated, through Mr. Justice Barredo, that "ordinarily, [the] findings of fact [of the Court of Industrial Relations] should bind this Court, particularly because in unfair labor practice cases, the rule in regard the cases appealed from the Court of Industrial Relations . . . . is [provided] in Section 6 of the Industrial Peace Act," which states that the findings of fact of the Court of Industrial Relations, if supported by substantial evidence on

[73] G.R. No. L-29068, August 31, 1971, 40 SCRA 521.

the record, shall be conclusive. However, the Supreme Court, in going over the record of the case, found and so stated that there were other countervailing evidence therein which sufficiently detracts from the evidence upon which the findings of fact of the Court of Industrial Relations were based. As a result, the Supreme Court made a different finding of facts which modified the decision of the Court of Industrial Relations.

The same thing happened in *Philippine Engineering Corporation v. Court of Industrial Relations*[74] and *Cruz v. Philippine Association of Free Labor Unions*.[75]

In the *Philippine Engineering Corporation* case, Mr. Justice Zaldivar, who expressed the view of the Supreme Court, thumbed down the contention of the petitioner that the Court of Industrial Relations had erred in not holding that the petitioner's machine shop at Raon Street was closed due to legitimate cessation of business "after a careful review of the record" of the case and "evaluation of the conflicting evidence of the parties."

In the *Cruz* case, the Supreme Court, in an opinion prepared by Mr. Justice Enrique M. Fernando, stated that while the findings of fact of the Court of Industrial Relations is invariably accorded acceptance by the Supreme Court, it could happen that the Supreme Court may fail to view matters similarly and that the Supreme Court has the power to make a different findings of fact on the basis of the record of the case.

Comments

In the 1970 cases of *Free Telephone Workers Union v. Philippine Long Distance Telephone Company*,[76] *LVN Pictures Checkers Union v. LVN Pictures, Inc.*[77] and *Lakas ng Manggagawang Makabayan v. Court of Industrial Relations*,[78] the Supreme Court made it very clear that in determining the conclusiveness of the decision of the Court of Industrial Relations it would no longer disregard other evidence on the record of the case which fairly detracts from the evidence upon which the findings of fact of the Court of Industrial Relations are based. In these three 1970 cases, the Supreme Court emphasized the two aspects of the substantial-evidence rule provided in Section 6 of the Industrial Peace Act, namely, the quantitative and the qualitative, both of which it will apply although giving more weight on the quality of the facts.[79]

In my survey of the 1970 decisions of the Supreme Court on this question, I stated that the Supreme Court is now firmly committed to its respon-

[74] G.R. No. L-27880, September 30, 1971, 41 SCRA 89.
[75] G.R. No. L-26519, October 29, 1971, 42 SCRA 68.
[76] G.R. No. L-24593, July 31, 1970, 34 SCRA 44.
[77] G.R. Nos. L-23495 & L-26432, September 30, 1970, 35 SCRA 147.
[78] G.R. No. L-32178, December 28, 1970, 36 SCRA 600.
[79] Gonzales v. Victory Labor Union, G.R. No. L-23256, October 31, 1969, 30 SCRA 47.

sibility for the credibility, reasonableness and sufficiency of the findings of fact of the Court of Industrial Relations. The position of the Supreme Court now is that even though the findings of fact of the Court of Industrial Relations may have some basis on the record of the case, such findings may, nevertheless, be disregarded in the face of other reliable evidence which are also on the record of the case. In the 1970 *Lakas ng Manggagawang Makabayan* case, the Supreme Court, expressing its view through Mr. Justice Castro, ruled for the first time, after so many reminders, that the findings of fact of the Court of Industrial Relations would not be substantial, as required by Section 6 of the Industrial Peace Act, "if it were based simply on the portion of the evidence that supports its findings. Justice and equity demands that the record of the case be considered *as a whole*." [80]

During the year in review, the Supreme Court has continued this new approach on the question of the conclusiveness of the findings of fact of the Court of Industrial Relations. And rightly so because the Industrial Peace Act does not require preponderance of evidence as in ordinary civil cases.[81] Indeed, it requires only substantial evidence on the record of the case "considered as a whole"[82] to support the findings of fact of the Court of Industrial Relations. The meaning of the substantial-evidence-on-the-record rule "does not depend only on the quantum of the facts presented to support the conclusion of the Court of Industrial Relations but also, and more importantly, on the quality of those facts."[83] Thus, substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[84] Obviously, the evidence on which the findings of fact of the Court of Industrial Relations are based would not be adequate if it were based simply on the portion of the evidence that support such findings. That kind of evidence would not be true, credible, strong, or positive if contrary evidence on the record of the case were not also taken into consideration.

IV. CERTIFICATION OF LABOR DISPUTE BY THE PRESIDENT

A. CHALLENGING PRESIDENTIAL CERTIFICATION

In *Manila Cordage Company v. Court of Industrial Relations and Manila Cordage Workers Union*,[85] the employer challenged the presidential cer-

[80] Emphasis by Mr. Justice Castro.

[81] Philippine Engineering Corporation v. Court of Industrial Relations, G.R. No. L-27880, September 30, 1971, 41 SCRA 89; Industrial, Commercial, Agricultural Workers Association v. Bautista, G.R. No. L-5639, April 30, 1963, 7 SCRA 907.

[82] Lakas ng Manggagawang Makabayan v. Court of Industrial Relations, G.R. No. L-32178, December 28, 1970, 36 SCRA 600.

[83] Free Telephone Workers Union v. Philippine Long Distance Telephone Company, G.R. No. L-24593, July 31, 1970, 34 SCRA 44; Gonzales v. Victory Labor Union, G.R. L-23256, October 31, 1969, 30 SCRA 47.

[84] United States Lines v. Associated Watchmen and Security Union, G.R. No. L-12208, May 21, 1958.

[85] G.R. No. L-25943, January 30, 1971, 37 SCRA 288.

tification in the court below as an invalid exercise of the authority granted to the President under Section 10 of the Industrial Peace Act on two grounds: 1) that no labor dispute existed between the parties, and 2) that the employer's business was not an industry indispensable to the national interest.

The Court of Industrial Relations was not impressed and issued an order denying the motion to dismiss on the ground that the correctness of a presidential certification is not its concern since the exercise of that authority devolves exclusively on the President under Section 10 of the Industrial Peace Act. Citing the case of *Pampanga Sugar Development Company, Inc. v. Court of Industrial Relations,*[86] where the Supreme Court held that a presidential certification cannot be refused even though it may be erroneous, the Court of Industrial Relations held that there is no reason for it to deviate from the ruling of the Supreme Court.

Having lost its motion for reconsideration, the Company brought the issue to the Supreme Court on a petition for review on appeal. There the employer zeroed in on the lower court's order giving due course to the presidential certification. The employer argued that this was error on the part of the lower court because the certification was based on the erroneous opinion of the President that there was an existing labor dispute between the Company and the Union and that the Company's business was an industry indispensable to the national interest.

The Supreme Court sustained the Court of Industrial Relations and held that there is no debate on the validity and efficacy of a presidential certification, whether it was issued erroneously or not is of no moment. The President, explained the Supreme Court, is the only official empowered to certify a case to the Court of Industrial Relations for compulsory arbitration if in his opinion a labor dispute occurs in an industry indispensable to the national interest.

Comments

This is not the first time that the validity and propriety of a presidential certification issued under Section 10 of the Industrial Peace Act was questioned.

In two previous cases, namely, *Feati University v. Feati University Faculty Club,*[87] and *Pampanga Sugar Development Company, Inc. v. Court of Industrial Relations,*[88] the legality of the presidential certification was also questioned and motions for the dismissal of the cases in the court below were likewise filed on the ground that the presidential certifications were issued without the necessary factual basis.

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[86] G.R. No. L-13178, March 25, 1961, 1 SCRA 770.
[87] G.R. Nos. L-21278, L-21462 & L-21500, December 27, 1966, 18 SCRA 1191.
[88] G.R. No. L-13178, March 25, 1961, 1 SCRA 770.

The Supreme Court dismissed this line of argument on the ground that the presidential certifications issued in both cases were done in the exercise of the discretion vested alone in the President of the Philippines by Section 10 of the Industrial Peace Act. For this reason, courts cannot interfere with, let alone curtail, the exercise of such presidential prerogative.

I feel that the collateral attacks of management against the validity of the presidential certifications issued in the three cases mentioned above were misdirected. It would seem futile to me to move for the dismissal of a case certified by the President on the ground of erroneous exercise of power. Even if the facts mentioned in Section 10 of the Industrial Peace Act are present, the President may decide not to certify a case to the Court of Industrial Relations and no one can do anything about it. He may even certify a case even if the facts are not there. As Presiding Judge Arsenio Martinez of the Court of Industrial Relations puts it humorously, even though he may be stressing the point seriously, in a lecture which he delivered at the *Fourth Annual Institute on Labor Relations Law*,[89] "if the President declares that there is public interest involved in a strike in a *hopia* factory, who can question his discretion on the matter."

In my discussion of this issue six years ago, in the *Fourth Annual Institute on Labor Relations Law*,[90] I expressed the opinion that although the present policy of the Industrial Peace Act does not permit any court in the Philippines to interfere with or curtail the power of the President of the Philippines to certify a case for compulsory arbitration by the Court of Industrial Relations, there's still a substantial distinction between the executive power to certify a case and the judicial power to assume jurisdiction over it. It is an entirely different question, no longer falling within the principle of separation of powers, when the issue is attacked frontally. In other words, it would be good strategy to proceed with the merits of the case rather than attack the issue collaterally.

Section 10 of the Industrial Peace Act provides:

> When in the opinion of the President of the Philippines there exists a labor dispute in an industry indispensable to the national interest and and when such labor dispute is certified by the President to the Court of Industrial Relations, said Court may cause to be issued a restraining order forbidding the employees to strike or the employer to lockout the employees, pending an investigation by the Court, and if no other solution to the dispute is found, the Court may issue an order fixing the terms and conditions of employment.

Pursuant to this provision, the purpose of a presidential certification is merely to categorize the controversy between management and labor as an

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[89] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, PROCEEDINGS OF 1967, 24-29, U.P. LAW CENTER, 42 PHIL. L. J. 52, 68-72 (1967).

[90] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW-1969, 158, U.P. LAW CENTER

emergency situation requiring prompt governmental attention. In other words, the presidential certification merely sets the statutory mechanism of compulsory arbitration in operation. But, as Section 10 clearly provides, the presidential certification does not foreclose the investigation of the case by the Court of Industrial Relations to inquire into the presence of the statutory conditions which would provide the court with authority to exercise its jurisdiction of compulsory arbitration. And these conditions are: 1) the existence of a labor dispute as this term is defined in Section 2(j) of the Industrial Peace Act, 2) the indispensability of the industry to the national interest, and 3) the lack of any solution other than compulsory arbitration to resolve the dispute. In the meanwhile, the Court of Industrial Relations may issue a restraining order forbidding a strike or lockout.

The statement of the Supreme Court that the purpose of the presidential certification is to bring about a quick solution by means of compulsory arbitration is too sweeping. To be accurate, the Court of Industrial Relations cannot exercise its jurisdiction to compulsorily arbitrate the issues between the parties upon receipt of the presidential certification without inquiring into the statutory conditions required by Section 10, as held in *Philippine Federation of Petroleum Workers and Malayang Mangagawa sa ESSO v. Court of Industrial Relations and ESSO Standard Eastern, Inc.*[91] Only if these three conditions are present may the Court of Industrial Relations compulsorily arbitrate the case.

Once a case is certified by the President of the Philippines, the law requires the Court of Industrial Relations to conduct a hearing. This clearly indicates the intention of Congress not to make a rubber stamp of the Court of Industrial Relations. Stated differently, while the President is empowered by the Industrial Peace Act to certify a case to the Court of Industrial Relations, the latter is not without authority to determine whether a dispute between management and labor is a national interest case, that is to say, whether the case conforms to the statutory conditions or not. Thus, the Court of Industrial Relations, in the first instance, has to deal with the question of whether the jurisdictional facts provided in Section 10 are present or not. If they are not, then, obviously, the Court of Industrial Relations has no authority to exercise its power of compulsory arbitration because there is simply nothing to compulsorily arbitrate.

In the decision of the 1971 *Manila Cordage Company* case, it is not noticeable that this is the approach that the Supreme Court intends to follow on this question. While the Supreme Court said that there can be no argument concerning the exercise by the President of his power to certify a case to the Court of Industrial Relations, the Supreme Court admitted that the facts of the case show that there was really no labor dispute existing between

[91] G.R. No. L-26346, February 27, 1971, 37 SCRA 711.

the petitioner Company and the respondent Union because the dispute was terminated a week before the issuance of the presidential certification when the parties themselves solved their differences and signed a return-to-work agreement, which they immediately implemented. In evaluating the circumstances of the case, the Supreme Court noted that "the order of denial of the respondent Court would indeed seem to be less than justified." Touching on the Company's motion for reconsideration of the court's denial of its motion to dismiss the case, the Supreme Court stated that as matters stood when the respondent court denied the motion for reconsideration, there was already a new collective-bargaining agreement signed between the Company and the Union. And since the persons who signed the return-to-work agreement were the legitimate officer of the Union, contrary to the allegation of a splinter group, then according to the Supreme Court "it would be quite clear that the industrial court should have declared itself without further bases or authority to continue trying to arbitrate differences between parties who have already settled those differences by themselves, precisely in the manner encouraged and protected by the Industrial Peace Act." And so the Supreme Court held that a voluntary and valid collective-bargaining agreement "entered between an employer and a labor union before or after a presidential certification is issued under Section 10 of the Industrial Peace Act ousts the jurisdiction of the Court of Industrial Relations, except as to the question of whether or not the agreement is contrary to law, moral or public policy, should such question be raised by any of the parties." [92]

B. Scope of Power of Court of Industrial Relations in Labor Disputes Certified by the President

In the case of *Philippine Federation of Petroleum Workers and Malayang Manggagawa sa ESSO v. Court of Industrial Relations and ESSO Standard Eastern, Inc.*,[93] the trial court approved a return-to-work agreement which was submitted independently of the relevant issues between the parties which were then pending in the other branches of the trial court.

The Supreme Court, speaking through Mr. Justice Teehankee, ruled that where a labor dispute has been certified by the President to the Court of Industrial Relations, all issues involved therein, including those pending in the other branches of the court which are germane to the labor dispute, should be determined in the branch of the court where the national interest case, as certified by the President, was docketed. According to Mr. Justice Teehankee, the lower court should not permit the parties to isolate the other germane issues or demands in other cases pending before the other branches of the Court of Industrial Relations, notwithstanding the

[92] Emphasis supplied.
[93] G.R. No. L-26346, February 27, 1971, 37 SCRA 711.

express stipulation of the parties to the contrary. All other pending cases germane to the national interest case should be consolidated in, or jointly tried by, the branch which has taken cognizance of the national interest case so that all the issues and demands may be finally determined and the dispute definitely settled once and for all, rather then arrive at a piecemeal settlement of the issues between the parties.[94]

V. COLLECTIVE BARGAINING

A. MODIFICATION OF COLLECTIVE-BARGAINING AGREEMENTS

In the case of *Philippine Federation of Petroleum Workers and Malayang Manggagawa sa ESSO v. Court of Industrial Relations and ESSO Standard Eastern, Inc.*,[95] the respondent Company unilaterally abolished certain positions and withdrew certain benefits previously agreed upon in a collective-bargaining agreement.

The Supreme Court, through Mr. Justice Teehankee, held that a subsisting collective-bargaining agreement may not be peremptorily modified without the thirty-day notice required by paragraph 2 of Section 13 of the Industrial Peace Act. According to the Supreme Court, there is no allegation that the necessary notice was given by the Company to the party concerned covering the modifications made by the respondent Company.

B. EFFECT OF COLLECTIVE-BARGAINING AGREEMENT ON SCOPE OF MANAGEMENT FUNCTION

As a result of a study made by the Shell Company of the Philippines, Ltd., for the purpose of improving the organization, productivity and efficiency of its Pandacan Installation, the Company decided to dissolve the Security Section at Pandacan. According to the study, the dissolution of the Security Section would mean an annual savings of about ₱96,000, let alone the consequential elimination of over-time pay. Consultations, therefore, were had between the Company and the Shell Oil Workers' Union. At this stage, no serious opposition came from the Union. As a matter of fact, the parties agreed to implement the decision gradually and in close consultation with the Union. In the meanwhile, negotiations for a new collective-bargaining agreement were held between the Company and the Union. Among the matters included in the contract was the recognition by the Company of the security guards at the Pandacan Installation as part of the appropriate collective-bargaining unit represented by the Union together with job description, work area, work schedule, wage schedule, and night

[94] Philippine Steam Navigation Company v. Philippine Marine Officers Guild, G.R. Nos. L-20667 & L-20669, October 29, 1965, 15 SCRA 174.
[95] G.R. No. L-26346, February 27, 1971, 37 SCRA 711.

differential. Subsequently, the Company put into effect the dissolution of the Security Guards Section at the Pandacan Installation by reassigning the guards to other positions in the other departments of the Company and contracted out the security service to an independent private security agency. The Union went on a strike. The Company, in turn, dismissed the security guards and officers of the Union.

The Union contended that the security guards were a part of the collective-bargaining unit represented by the Union and covered by the existing collective-bargaining agreement, and as such, their transfer and subsequent dismissals were contrary to the provisions of the collective-bargaining agreement. On the other hand, the Company argued that the dissolution of the Security Guards Section at the Pandacan Installation was a valid exercise of management function and that the guards were dismissed because of their willful refusal to obey the transfer order of the Company.

In deciding this particular issue in *Shell Workers' Union v. Shell Company of the Philippines, Ltd.*,[96] the Supreme Court, through Mr. Justice Fernando, agreed with the stand of the Company on the scope of management prerogative. However, the Supreme Court ruled that this can be limited by stipulation of the parties. Thus, said the Court, when the Company agreed with the Union for the inclusion of the security guards as part of the larger collective-bargaining unit with designated work and work areas, wage schedules, and night differential pay in the collective-bargaining agreement, then it stands to reason that the Company had yielded that much of its management prerogative for joint-management-union negotiation.

Comments

Management functions and labor union prerogatives have always been a source of disagreement during negotiations for collective-bargaining agreements. The determination of the respective responsibilities of management and union is of practical concern to the bargaining parties. These responsibilities have been classified into three groups: 1) matters as to which management makes the decision, 2) matters for joint management-union decision, and 3) matters within the exclusive control of the union. Among the matters falling under the first classification are assignment of workers, work scheduling, selection of new employees, and subcontracting of work or services. But this is not absolute. Management may yield and allow them to be subjects of collective bargaining. Of special significance is the fact that under the terms and conditions of the collective-bargaining agreement in the 1971 *Shell Workers' Union* case, the Company could no longer contract out the security service at its Pandacan Installation to a private security agency

[96] G.R. No. L-28607, May 31, 1971, 39 SCRA 276.

without the consent of the Union,[97] because this would mean removal of work and thus illegal discrimination and interference with the rights of the employees under Section 3 of the Industrial Peace Act.

But it is hard to go along with the view expressed by the Supreme Court that stipulations limiting management functions should remain "at least during the lifetime of the agreement." It would seem to me that subjects falling within the exclusive control of management or union which have become bargainable upon agreement of the parties may also be returned to their former classification when the parties agree to do so even during the effectivity of the collective-bargaining agreement.

VI. SUCCESSOR DOCTRINE

During the year in review, two important cases on the successor doctrine in labor relations law were decided by the Supreme Court, namely, *Cruz v. Philippine Association of Free Labor Unions*[98] and *H. Aronson & Co., Inc. v. Associated Labor Unions*.[99]

In the *Cruz* case, the respondent Court of Industrial Relations sustained the claim of the respondent Philippine Association of Free Labor Unions that the Quality Container Factory was sold by Victor and Catalina Tan to Carlos Cruz in order to avoid bargaining collectively with the Union as the duly chosen bargaining representative of the employees. According to the Court of Industrial Relations there was no evidence presented which would somehow indicate that business was lean or that the vendors wanted to retire from the business of manufacturing and selling tin cans. On the contrary, the lower court found that the labor dispute was at its height when the alleged sale was consumated.

On review, the Supreme Court affirmed the decision of the lower court. "The conclusion reached by the Court of Industrial Relations," said the Supreme Court "finds support in the law. It would be a frustration of the statutory scheme in the Industrial Peace Act [referring to Section 12(a) of the Act] instituting a regime of free collective bargaining to hold otherwise. The choice as to the bargaining representative of the employees belongs to them alone."

In the *Aronson Company* case it appears that in 1958 a majority of the employees became members of the Associated Labor Union. Soon thereafter the union asked the company for a collective-bargaining agreement. At first the company turned down the request but after the Union went on a strike a collective-bargaining agreement was negotiated and signed between

[97] Town and Country Manufacturing Company v. National Labor Relations Board, 316 F. 2d 846 (1963).
[98] G.R. No. L-26519, October 29, 1971, 42 SCRA 68.
[99] G.R. No. L-23010, July 9, 1971, 40 SCRA 7.

the parties. Somtime in January of 1960, the company notified all the employees that their employment would be terminated on July 31, 1961 on the ground that the company would be dissolved due to "poor business." Accordingly, the Articles of Incorporation of H. Aronson & Company was amended by shortening its corporate life by nine (9) years, coinciding with the date set for the termination of the employment of all its employees. However, within a month of the amendment of the Articles of Incorporation, two new companies were organized and incorporated which took over the entire business of H. Aronson & Company including its offices and business site. The two new companies were also under the control of the Aronson family. Fifteen days before the expiration of the amended corporate life, H. Aronson & Company ordered all its employees who were members of the Associated Labor Union to stop working. Those who were not members of the Union were allowed to continue working and on the expiration of H. Aronson & Company were absorbed and employed by the two newly organized corporations, which both started business operations on the very day H. Aronson & Company expired.

On the basis of these facts, the Supreme Court affirmed the decision of the lower court that the dissolution of H. Aronson & Company and the incorporation of two new companies were part of a plan to get rid of the employees of H. Aronson & Company who were union members. This, according to the Supreme Court, was discrimination on grounds of union membership and activities and not because of business losses.

Comments

These two cases are very good examples of the successor doctrine in labor relations law. Unfortunately the Supreme Court missed the opportunity of enriching the jurisprudence in labor relations law notwithstanding the fact that in both cases the employers concerned raised squarely the applicability of this doctrine.

In the *Cruz* case, the successor-employer faulted the Court of Industrial Relations of failure to hold that "labor contracts being *in personam* are not enforceable against a transferee of an enterprise, there being no employer-employee relationship existing between the new owner and the complaining employees."

In the *Aronson* case, the two corporations argued that they cannot be considered successor-employers because there was no employer-employee relationship between them and the union members.

There is yet another argument which successor-employers usually advance to avoid responsibility with the bargaining union of the employees under a collective-bargaining agreement: lack of privity of contract be-

tween the successor-employer and the labor union which had entered into a collective-bargaining agreement with the predecessor-employer there being no previous consent on the part of the successor-employer to assume the obligations of the predecessor-employer to the labor union under the collective-bargaining agreement.

But this argument, as well as the argument advanced by the successor-employers in the 1971 cases carry no weight where the successor-employer continues in an essentially unchanged manner the business operations of his predecessor.[100] This means that all the terms and conditions of a collective-bargaining agreement entered into by the predecessor-employer and the bargaining agent are binding on the successor-employer, even though labor contracts are *in personam* or that there is no privity of contract between the successor-employer and the bargaining representatives of the employees.

There are several factors which determine the question of sufficient continuity of the business operations of the predecessor employer by the successor employer: 1) use of the same plant or factory, 2) employment of the same or substantially the same employees, workers or supervisors, 3) similar or substantially the same working conditions, 4) use of the same machinery, tools and equipment, 5) production of the same products or the performance of the same services, 6) the same corporate control under a change of name, 7) absolute or conditional sale, 8) advances to the purchaser to continue the operation of the plant or business or to meet purchaser's payrolls, 9) agreement of purchaser to continue business relations with the seller, 10) agreement of purchaser not to go out of business without seller's prior approval, 11) the degree of relationship between the seller and purchaser, and 12) treatment in the contract of seller's labor relations problems with the employees.[101]

There is a subsisting relationship between a predecessor-employer and a successor-employer if a sufficient number of these economic factors, which are by no means exclusive, exist. And in this case it is no defense that the successor-employer is specifically excluded in the contract of sale or transfer of assets or stocks of a business from assuming the obligations of the predecessor-employer to the labor union contained in the collective-bargaining agreement.[102]

The rationale for the successor doctrine is that collective-bargaining agreements unlike ordinary contracts involve much more than private interests.

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[100] John Wiley and Sons v. Livington, 376 U.S. 543, 11 L.Ed. 2d 898, 84 S.Ct. 9009 (1964), applied in Reliance Universal, Inc. of Ohio v. United Steel Workers of America, 335 F.2d 891 (1964).

[101] National Labor Relations Board v. New Madrid Manufacturing Company, 215 F.2d 908 (1954).

[102] National Labor Relations Board v. Armato, 199 F.2d 800 (1952); Maintenance, Inc., 148 NLRB 114 (1964); Johnson Ready Mix Company, 142 NLRB 437 (1963); Auto Ventshade, Inc. 123 NLRB 451 (1959).

Furthermore, the successor-employer could arrange whatever changes or adjustments which he may consider necessary in connection with the union obligations of his predecessor during the negotiations between them for the sale of the business, an arrangement which the employees of the predecessor-employer could not make.[103]

VII. UNION SECURITY CLAUSES

A. Employment Shop Arrangements

The question raised in the case of *Elegance, Inc. v. Court of Industrial Relations*,[104] was whether the dismissal of the respondent employees was justified on the basis of the union-shop employment arrangement contained in the collective-bargaining agreement between the Company and the Union. The union-shop clause in question provides that the employees must become members of the Union within 30 days from the signing of the collective-bargaining agreement as a condition of continued employment and that any dispute or question as to whether an employee is a member of the Union in good standing shall be decided pursuant to the grievance procedure embodied in the agreement.

The facts show that the respondent employees had sent their joint application for membership to the Union within the prescribed period of 30 days by means of a registered letter. Not having received it after the lapse of the 30-day period, the Union asked the Company to dismiss the respondent employees for their failure to sign up with the Union, which the Company did. After the registered letter of affiliation was received by the Union, neither the Union nor the Company took any step to reinstate the respondent employees, even though the reason for the dismissal had ceased to exist.

The Supreme Court condemned the precipitate manner in which the dismissal of the respondent employees was carried out by the Union and the Company. Furthermore, said the Court, the provision of the union security clause in the collective-bargaining agreement requiring the parties to settle any question of membership in the Union pursuant to the grievance procedure therein provided was not complied with, notwithstanding the alleged threat of the Union to file charges against the Company unless the respondent employees were dismissed.

This would have been enough to dispose of the issue, but the Supreme Court proceeded to discuss the question of the scope of the closed-shop and union-shop employment arrangements and said:

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[103] William J. Burns International Detective Agency, Inc., 182 NLRB 50 (1970); Kota Division of Dura Corporation, 182 NLRB 51 (1970); Travelodge Corporation, 182 NLRB 52 (1970); Hackney Iron and Steel Company, 182 NLRB 53 (1970).

[104] G.R No. L-24096, April 20, 1971, 38 SCRA 382.

> It should be noted that they were already in the service when the said contract was entered into, and that only a clear and definite showing of their failure to affiliate with the union within the period fixed for that purpose would justify their dismissal, assuming that the union shop clause was applicable to them. Even this point, however, was not altogether free from doubt at the time, for it ran counter to the spirit of the Industrial Peace Act which recognizes the right of the employees to self-organization and to form, join or assist labor organizations of their own choosing.

Comments

In order to attain union security and strength and to meet the specific needs of their members, labor unions themselves need to be strong. Thus, labor unions have devised union security arrangements for inclusion in collective-bargaining agreements to establish union security and strength with respect to employers, other labor unions and the workers or laborers themselves. One of these devices is the shop arrangement provision.

Under Section 4(a)(4) of the Industrial Peace Act, no shop arrangement containing a greater degree of discrimination and compulsion than that contained in the closed-shop arrangement is allowed. Indeed, the closed-shop arrangement itself would have been an unfair labor practice were it not expressiy excepted from the catalog of unfair labor practices. Its only redeeming feature is that it is a means of hastening the realization of the policies of the Industrial Peace Act.

Over the years, the Supreme Court has been bothered by the question of the validity and scope of the union security arrangements recognized under Section 4(a) (4) of the Industrial Peace Act.

From the conflicting decisions of the Supreme Court on this problem, there are three identifiable schools of thought on this question. Necessarily, they can't all be correct—only one is. But it is very difficult to identify the members of the Supreme Court belonging to each group because they seem to have no difficulty in moving from one position to another as cases involving this question reach them.

The first school of thought holds the view that if the closed-shop or union-shop arrangement agreed upon in the collective-bargaining agreement does not explicitly and clearly provide that employees must remain members of the bargaining union in good standing to keep their jobs and that non-membership is a ground for dismissal, then the shop arrangement covers only those persons who are hired by the employer after the signing of the collective-bargaining agreement and does not affect the employer's right to retain in employment those previously employed even if they are not union members. But if these conditions are unequivocally provided in the union security clause of a collective-bargaining agreement, then it covers all persons regardless of when they were employed and of the fact that they are

already members of other labor unions. This is the unanimous view of the Supreme Court, expressed through Mr. Chief Justice Roberto Concepcion, in the case of *Confederated Sons of Labor v. Anakan Lumber Company*.[105]

In the *Anakan Lumber Company* case, the shop arrangement agreed upon gave the Union the exclusive right to supply the laborers, workers and employees which the Company may need, with the exception of technical and confidential personnel. For its part, the Company agreed to hire only such persons who are members of the bargaining Union. Nevertheless, Mr. Chief Justice Concepcion felt that the shop arrangement agreed upon by the parties was not *the* closed-shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act. He based his conclusion on two points: 1) that the employees of the Company were not informed of the nature of the shop arrangement agreed upon by the Union and the Company, and 2) that the shop arrangement embodied in the collective-bargaining agreement failed to express unequivocally that all employees must become and remain members in good standing of the bargaining union to keep their jobs and that non-membership or discontinuance of membership in the bargaining Union is a ground for dismissal.

Mr. Chief Justice Concepcion held that this omission in the union security clause of the collective-bargaining agreement was fatal to the establishment of *the* closed shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act. As a result, the Supreme Court construed the shop arrangement agreed upon by the parties in the collective-bargaining agreement to be of *limited* application only. This means that those employed after the signing of the collective-bargaining agreement and are not yet union members are the ones required to become members of the bargaining Union to keep their jobs. In other words, those persons who are on the job on or before the execution of the collective-bargaining agreement and already members of other labor unions are not to be affected by the union security clause contained in the collective-bargaining agreement. This, Mr. Chief Justice Concepcion aptly described as a "limited closed shop" and not *the* closed-shop arrangement authorized or permitted in Section 4(a)(4) of the Industrial Peace Act.

The 1960 *Anakan Lumber Company* case does not only show a careful analysis of the scope of the closed-shop or union-shop arrangement but it likewise exhibits a healthy feeling for the circumstances in which labor relations law is evolving at the present time in our country. But six months after the unanimous decision in the *Anakan Lumber Company* case, the Supreme Court surprisingly started generalizing on the nature and scope of the closed-shop arrangement permitted under Section 4(a)(4) of the Industrial Peace Act. This continued until the middle of 1963.

[105] 107 Phil. 915 (1960).

The second school of thought holds the view that the closed-shop arrangement permitted in Section 4(a)(4) of the Industrial Peace Act cannot operate *de respecit* as to compel employees who are already members of other labor unions to join the bargaining union but only *de prospecit* as to apply only to those who are employed after the execution of the collective-bargaining agreement and are not yet members of any other labor organization.[106] According to this view, of which the 1971 *Elegance, Incorporated* case is the latest, the closed-shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act is inapplicable to those already in the service who are members of other labor organizations. Indeed, the Supreme Court even went further in the 1971 *Elegance, Incorporated* case by saying that the union security clause embodied in the questioned collective-bargaining agreement is contrary to the spirit of the Industrial Peace Act which recognizes the right of the employees to self-organization and to form, join or assist labor organizations of their own choosing. According to the Supreme Court, any doubt as to the validity of this view was resolved in the case of *Freeman Shirt Manufacturing Company, Inc. v. Court of Industrial Relations,*[107] where the Supreme Court ruled that the shop arrangement authorized in the proviso of Section 4(a)(4) of the Industrial Peace Act is contrary to Section 3 thereof as well as Article III, Section 1(6) of the Constitution.

In the 1971 *Elegance, Inc.* case, the Supreme Court doubted the applicability of the union-shop arrangement on the respondent employees since they were already in the employ of the petitioner Company when the union-shop arrangement was agreed upon. But, as stated above, the Supreme Court felt comforted by its own ruling in the 1961 *Freeman Shirt Manufacturing Company* case that the closed-shop agreement authorized under Sec. 4 subsec. 4(a) of the Industrial Peace Act above-quoted should, however, apply only to persons to be hired and to employees who are not yet members of any labor organization. It is inapplicable to those already in the service who are members of another union. To hold otherwise, *i.e.*, that the employees in a company who are members of a minority union may be com-

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[106] Local 7, Press & Printing Free Workers v. Emiliano Tabigne, G.R. No. L-16-093, November 29, 1960; Freeman Shirt Manufacturing Co., Inc. v. Court of Industrial Relations, G.R. No. L-16561, January 28, 1961; Talim Quarry Company, Inc. v. Gavino Bartola, G.R. No. L-15768, April 29, 1961; Findlay Millar Timber Company v. Philippine Land-Air Sea Labor Union, G.R. Nos. L-18217 & L-18222, September 29, 1962; Kapisanan ng mga Manggagawa sa Alak v. Hamilton Distillery Company, G.R. No. L-18112, October 30, 1962; Industrial, Commercial and Agricultural Workers Organization v. Jose S. Bautista, G.R. No. L-15639, April 30, 1963; United States Lines v. Associated Watchmen and Security Union, G.R. No L-15508, June 29, 1963; Big Five Products Workers Union v. Court of Industrial Relations, G.R. No. L-17699, July 31, 1963; National Brewery & Allied Industries Labor Union v. San Miguel Brewery, Inc., G.R. No. L-18170, August 31, 1963; and Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations, G.R. Nos. L-19173 and L-19274, February 29, 1964, 10 SCRA 433.

[107] G.R. No. L-16561, January 28, 1961, 1 SCRA 353.

pelled to disaffiliate from their union and join the majority or contracting union, would render nugatory the right of all employees to self-organization and to form, join or assist labor organizations of their own choosing, a right guaranteed by the Industrial Peace Act (Sec. 3, Republic Act No. 875) as well as by the Constitution (Art. III, Sec. 1 [6]).

Obviously, the *Freeman* decision is banking heavily on the proposition that the union security arrangement authorized by Section 4(a)(4) of the Industrial Peace Act is: 1) contrary to Article III, Section 1(6) of the Constitution, which recognizes and protects the right to form associations for purposes not contrary to law, and 2) contrary to Section 3 of the Industrial Peace Act, which recognizes and protects the right of employees to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining.

Let us consider these arguments separately.

The appeal to the Constitution makes it appear that the right to form association for purposes not contrary to law is absolute. But it is well-settled in constitutional law that this right is not inflexible for it is always subject to the exercise of the overriding police power of the State. As Sinco stated in his authoritative work, the privilege to form associations, even when their objectives are not contrary to law, can be limited by a valid public purpose that "is more important than the interest of the individual," provided "that the means employed must have a substantial and reasonable relation to the end to be achieved." [108] There is no question that the labor relations policy spelled out in Section 1 of the Industrial Peace Act is a valid public purpose and that the limitation embodied in Section 4(a)(4) of the Industrial Peace Act is substantially related, or a reasonable means, to the achievement of that labor relations policy.

The other argument of the Supreme Court in the 1961 *Freeman* decision is that the union security arrangement authorized in Section 4(a)(4) of the Industrial Peace Act is contrary to Section 3 thereof. Stated differently, the Supreme Court urges the idea that the proviso of Section 4(a)(4) of the Industrial Peace Act permitting an employer to enter into a union security arrangement with a duly certified bargaining union may not be given full effect because Section 3 thereof guarantees to employees the right to form, join or assist labor unions of their own choosing for the purpose of collective bargaining. But this argument of the Supreme Court is contrary to the Industrial Peace Act itself because the right of the employees under Section 3 of the Industrial Peace Act is not absolute either. In unmistakable terms, the proviso of Section 4(a)(4) of the Industrial Peace Act expressly

[108] SINCO, V. G. CONSTITUTIONAL LAW, 137 (2nd ed., 1960). For analogous cases, see Ongsiako v. Gamboa, 86 Phil. 50 (1950) and Primero v. Court of Agrarian Relations, G.R. No. L-10594, May 29, 1957.

stipulates the exception to the application of Section 3 of the Act, as follows:

> Provided, That *nothing in this Act* or in any other Act or statute of the Republic of the Philippines shall preclude an employer from making an agreement with a labor organization to require as a condition of employment *membership* therein, if such labor organization is the representative of the employees as provided in Section 12 . . . .[109]

Undoubtedly, this deliberate legislative policy covers even Section 3 of the Industrial Peace Act. Thus, the proviso of Section 4(a)(4) of the Act would read, in another way of putting it, as follows:

> Provided, That nothing in Section 3 of this Act or in any other Act or statute of the Republic of the Philippines shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 12 . . . .

This is well settled by the labor history that lies behind the reservation or exemption mentioned in the proviso of Section 4(a)(4) of the Industrial Peace Act. A scrutiny of Section 4(a)(4) of the Industrial Peace Act reveals that this is exactly the thrust of the public policy. Congress wanted to experiment with the closed-shop arrangement, under which an employer may agree with the duly selected representative of his employees to hire only those who are members in good standing of the contracting union. Since this experiment does not violate any constitutional standard, I feel that the Supreme Court should respect the congressional mandate. Moreover, the proviso of Section 4(a)(4) of the Industrial Peace Act is a qualification of or a restriction on the right of employees to self-organization and to form, join or assist labor organization subject only to the conditions that the closed-shop arrangement has been agreed upon by the parties and that the contracting labor union has been selected or designated by a majority of the employees, pursuant to any of the methods of selection or designation provided in Section 12 of the Industrial Peace Act. Even before the two 1963 *Victorias-Manapla Workers Organization* cases, the Supreme Court could not avoid this deliberate legislative policy in *National Brewery & Allied Industries Labor Union of the Philippines v. San Miguel Brewery, Inc.*[110] There, the Supreme Court, speaking through Mr. Justice Regala, correctly concluded that:

> The right of employees "to self-organization and to form, join or assist labor organizations of their own choosing" (Sec. 3, Republic Act No. 875 is a fundamental right that yields only to the proviso "that nothing in this Act or statute of the Republic of the Philippines shall preclude an employer from making an agreement with a labor organization

[109] Emphasis supplied.
[110] G.R. No. L-18170, August 31, 1963, 8 SCRA 805.

> to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section twelve.

In the United States, the U.S. Supreme Court has consistently rejected the contention that the National Labor Relations Board may not give full effect to the proviso of Section 8(a)(3) of the National Labor Relations Act (similar to the proviso of Section 4(a)(4) of the Industrial Peace Act) because it would nullify the right to self-organization and to form, join or assist labor organizations for the purpose of collective bargaining contained in Section 7 of the National Labor Relations Act (corresponding to Section 3 of the Industrial Peace Act). In the case of *Colgate-Palmolive-Peet Company v. National Labor Relations Board,*[111] which was cited by our Supreme Court in the two *Victorias-Manapla Workers Organization* cases, the Supreme Court of the United States took the view that:

> The proviso in Section 8(a)(3) of the National Labor Relations Act, that nothing in the Act or in any other statute of the United States shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the authorized representative of the employees, is, and was intended by Congress to be, a limitation upon the right of employees, guaranteed in Section 7 of the Act, to self-organization and to collective bargaining, through representatives of their own choosing.

The Supreme Court of the United States further stated that there is no need to justify congressional policy for it is enough that the congressional policy is clearly stated in the statute and warned that "the legislative policy cannot be defeated by what others think is the correct policy for that plainly would be putting limitations in the statute not placed there by Congress."

In the latest case decided by the Supreme Court of the United States on this point, *Local Lodge No. 1424, International Association of Machinists v. National Labor Relations Board,*[112] that Court stated that "Section 7 of the National Labor Relations Act [equivalent to Section 3 of the Industrial Peace Act], dealing with employees' rights to self-organization, is in terms limited by the scope of the Section 8(a)(3) proviso [the same as the proviso in Section 4(a)(4) of the Industrial Peace Act], dealing with union security clauses in collective-bargaining agreements." The court then repeated its warning "that Section 8(a)(3) of the National Labor Relations Act, including its proviso relating to union security clauses in collective-bargaining agreements, represents the congressional response to the competing demands of employee freedom of choice and union security; it is not for the administrators of the congressional mandate to approach either side of the line grudgingly."

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[111] 338 U.S. 355, 94 L.Ed. 161, 70 S.Ct. 166 (1949).
[112] 362 U.S. 441, 4 L.Ed. 2d 832, 80 S.Ct. 822 (1960).

The law in this jurisdiction is clear. It is the decisions that are conflicting. With all due respect to the Court, I think that the decisions in *Confederated Sons of Labor v. Anakan Lumber Company*,[113] *Victorias Milling Co., Inc. v. Victorias-Manapla Workers Organization*,[114] and *Victorias-Manapla Workers Organization v. Court of Industrial Relations* [115] express the correct view of the scope and function of the closed-shop arrangement under Section 4(a)(4) of the Industrial Peace Act.

But the safeguards introduced by Mr. Chief Justice Concepcion in the 1960 *Anakan Lumber Company* case are well taken. There, he correctly stated that although the closed-shop arrangement has, as a matter of law, (that is by the first proviso of Section 4(a)(4) of the Industrial Peace Act) been removed from the catalog of employer unfair labor practices, it is, as a matter of fact, still a discriminatory labor device. For this reason, the closed-shop arrangement can be enforced fully only when the employees are informed of the nature of the union security arrangement agreed upon in the collective-bargaining agreement and, more importantly, when it is expressed unequivocally in the collective-bargaining agreement that all employees must be members in good standing of the bargaining union to keep their jobs and that failure to remain as such is a ground for dismissal. If these two conditions are not expressed clearly in the union security clause, then the closed-shop arrangement agreed upon by the parties can only be given a limited application, that is to say, only those employed after the execution of the collective-bargaining agreement who are not yet members of other labor unions are required to become members in good standing of the bargaining labor union. Stated in another way, those on the job on or before the signing of the collective-bargaining agreement who are already members of other labor unions are not affected. This is what Mr. Chief Justice Concepcion means by his concept of "limited closed shop."

The third school of thought is to the effect that the closed-shop or union-shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act is an employment arrangement under which no person can be employed or keep his job unless he becomes a member of the bargaining labor union and remain a member thereof in good standing for the duration of the collective-bargaining agreement. This position was expressed in *National Brewery & Allied Industries Labor Union of the Philippines v. San Miguel Brewery, Inc.*,[116] *Victorias-Manapla Workers Organization v. Court of Industrial Relations*,[117] *Victorias Milling Company, Inc. v. Victorias-*

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[113] G.R. No. L-12503, April 29, 1960.
[114] G.R. No. L-18467, September 30, 1963, 9 SCRA 154.
[115] *Ibid.*
[116] G.R. No. L-18170, August 31, 1963, 8 SCRA 805.
[117] G.R. No. L-18470, September 30, 1963, 9 SCRA 154.

Manapla Workers Organization,[118] and *Manalang v. Artex Development Company, Inc.*[119]

In these cases, the Supreme Court categorically stated that "it is not true that the recognition and enforcement of the closed-shop arrangement would tend to perpetuate the labor organization which obtains it from the employer." Indeed, the union security clause permitted in Section 4(a)(4) is not unending for it is enforceable only up to a certain time, that is, during the life of the collective-bargaining agreement between the parties. This does not exclude the possibility of another labor organization being selected by the majority of the employees in an appropriate collective-bargaining unit. In any case, the Supreme Court accurately stated that there is no conflict or inconsistency between the union security clause recognized and protected in Section 4(a)(4) and the freedom of employees to self-organization and to join a labor organization for the purpose of collective bargaining. To support this view, the Supreme Court cited *Colgate-Palmolive-Peet v. National Labor Relations Board* [120] where the United States Supreme Court held that:

> One of the oldest techniques in the art of collective bargaining is the closed-shop. It protects the integrity of the union and provides stability of labor relations. To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act. Congress knew that a closed-shop would interfere with the freedom of employees to organize in another union and would, if used, lead inevitably to discrimination in tenure of employment. Nevertheless, with full realization that there was a limination by the proviso of Sec. 8(3) [of the National Labor Relations Act, corresponding to Section 4(a)(4) of the Industrial Peace Act] upon the freedom of Sec. 7 [corresponding to Section 3 of the Industrial Peace Act], Congress inserted the proviso of Sec. 8(3). It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute. That policy cannot be defeated by the Board's policy, which would make an unfair labor practice out of that which is authorized by the Act. The Board cannot ignore the plain provisions of a valid contract made in accordance with the letter and the spirit of the statute and reform it to conform to the Board's idea of correct policy. To sustain the Board's contention would be to permit the Board under the guise of administration to put limitations in the statute not placed there by Congress.

B. CHECK-OFF

In the case of *Philippine Federation of Petroleum Workers and Malayang Manggagawa sa ESSO v. Court of Industrial Relations and ESSO Standard Eastern, Inc.*[121] the respondent Court of Industrial Relations permitted the Company to continue checking off union dues for the Citizens Labor Union despite the disaffiliation of its members and their written in-

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[118] G.R. No. L-18467, September 30, 1963.
[119] G.R. No. L-20432, October 30, 1967, 21 SCRA 561.
[120] 338 U.S. 365, 94 L.Ed. 161, 70 S.Ct. 166 (1949).
[121] G.R. No. L-26346, February 27, 1971, 37 SCRA 711.

dividual revocation of their previous check-off authorization. The Company justified its action of continuing to make such deductions and remitting them to the Citizens Labor Union on the ground that the collective-bargaining agreement stipulated that the check-off authorization is irrevocable during the life of the collective-bargaining agreement.

The Supreme Court, through Mr. Justice Teehankee, properly held that this was error on the part of the lower court. Citing the case of *Pagkakaisa Samahang Manggagawa sa San Miguel Brewery v. Enriquez*,[122] Mr. Justice Teehankee stated for the Court that an irrevocable check-off is good only as long as the employees remain members of the Union but such obligation ceases when they separate from the Union. When this occurs, there is no longer any reason for the Company to continue deducting the union dues from the pay envelopes of the employees.

VIII. STRIKES

A. VALIDITY OF A STRIKE AS A PREJUDICIAL QUESTION TO THE MAIN ISSUE

In the case of *Philippine Airlines Employees Association v. Philippine Airlines, Inc.*,[123] the Court of Industrial Relations ruled that the return-to-work order which it issued was immediately effective and executory. Having lost the point in the court below, one of the grounds relied upon by the Union in support of its petition to reverse the lower court's decision was the pendency in the lower court of a case involving the legality of the strike called by the Union.

The Supreme Court stated that the prior resolution of the validity of the strike called by the Union is of no moment to the resolution of the question of whether the return-to-work order issued by the Court of Industrial Relations was properly issued. Citing the cases of *Feati University v. Court of Industrial Relations*,[124] *Maritime Company of the Philippines v. Paredes*,[125] and *Philippine Long Distance Telephone Company v. Free Telephone Workers Union*,[126] the Supreme Court stated that the principle enunciated in *Philippine Can Company v. Court of Industrial Relations* [127] does not apply when the case involves a labor dispute certified by the President to the Court of Industrial Relations as affecting an industry indispensable to the national interest. The Court reasoned that national interest cases by their very nature cannot be decided promptly by the lower court.

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[122] G.R. No. L-12999, July 26, 1960.
[123] G.R. No. L-32740, March 31, 1971, 38 SCRA 372.
[124] G.R. No. L-21278, December 27, 1966, 18 SCRA 1191.
[125] G.R. No. L-24811, March 3, 1967, 19 SCRA 569.
[126] G.R. No. L-25420, March 13, 1968, 22 SCRA 1013.
[127] 87 Phil. 9 (1950). See also Litex Products v. Court of Industrial Relations, 93 Phil. 1024 (1953).

Comments

A better statement of the principle governing this particular question is found in *National Power Corporation v. National Power Corporation Employees and Workers Association*[128] and *National Power Corporation Employees and Workers Association v. National Power Corporation and Court of Industrial Relations.*[129] In those cases, the National Power Corporation complained that the respondent lower court had granted the union demand for salary increases without first resolving the issue of the validity of the strike and urged on the Supreme Court that this is contrary to law and judicial precedent. The Corporation was referring to the decision in the case of *Philippine Can Company v. Court of Industrial Relations,*[130] where it was held that it was error on the part of the Court of Industrial Relations to order the strikers back to work before resolving the question of the validity of the strike.

In the survey of the 1970 decisions, the analysis of the decisions in the two *National Power Corporation* cases yielded the conclusion that the Supreme Court will continue to apply the ruling in the 1950 *Philippine Can Company* case strictly, that is to say, the validity of a strike is a prejudicial question to the decision in the main matter when: 1) it is squarely raised, 2) adverse effect on the parties would result if not first disposed of, and 3) it is crucial to the main matter involved in the case. In other words, the Supreme Court will relax the application of the 1950 *Philippine Can Company* decision, that is to say, there is no need to decide the question of the validity of a strike before deciding the main matter confronting the court when the validity of the strike is not crucial to the main matter. Some examples of this are: 1) a case where the employer does not claim that the lay-off of his employees was imperative in order to avoid impending bankruptcy but instead hired replacements for the striking employees to keep the plant going,[131] 2) a case where the striking employees have already returned to work by virtue of an agreement between the parties confirmed by the Court of Industrial Relations,[132] and 3) a case where the strike occurs in an industry indispensable to the national interest and certified as such by the President to the Court of Industrial Relations.[133]

B. GOOD FAITH AND THE VALIDITY OF STRIKES

In the case of *Shell Oil Workers Union v. Shell Company of the Philippines, Ltd.,*[134] the Supreme Court reversed the Court of Industrial Relations

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128 G.R. No. L-26169, June 30, 1970, 33 SCRA 806.
129 G.R. No. L-26178, June 30, 1970, 33 SCRA 806.
130 87 Phil. 9 (1950).
131 Feati University v. Bautista, G.R. No. L21278, December 27, 1966, 18 SCRA 1191.
132 Maritime Company of the Philippines v. Paredes, G.R. No. L-24811, March 3, 1967, 19 SCRA 569.
133 Philippine Long Distance Telephone Company v. Free Telephone Workers Union, G.R. No. L-15420, March 30, 1968, 22 SCRA 1013.
134 G.R. No. L-28607, May 31, 1971, 39 SCRA 276.

and held the strike called by the Union valid because it was provoked by the unfair labor practice of the employer. But the Court continued that "it is not even required that there be in fact an unfair labor practice committed by the employer. It suffices if such a belief in good faith is entertained by labor as the inducing factor for staging a strike." And in support of this pronouncement, the Court cited Mr. Chief Justice Concepcion's opinion in the case of *Ferrer v. Court of Industrial Relations*,[135] where it was held that "as a consequence, we hold that the strike in question has been called to offset what petitioners were warranted in believing in good faith to be unfair labor practices on the part of management, that petitioners were not bound, therefore, to wait for the expiration of thirty days from notice of strike before staging the same, that said strike was not, accordingly, illegal and that the strikers had not, therefore, lost their status as employees of respondents herein."

Comments

The opinion expressed by the Supreme Court in the 1971 *Shell Oil Workers Union* case that a strike is valid so long as strikers believe in good faith that they have some grievance against management is a disturbing pronouncement. Right off, the question that comes up is whether the Supreme Court in the 1971 *Shell Oil Workers Union* case has reversed its previous position on this question.

In several prior cases, namely, *Interwood Employees Association v. International Hardwood and Veneer Company*,[136] *Luzon Stevedoring Corporation v. Court of Industrial Relations*,[137] and *Lusteveco Employees Association v. Luzon Stevedoring Company, Inc.*,[138] the Supreme Court held that the determination of the validity of a strike does not depend on the belief in good faith of the strikers in the righteousness of their concerted activity. The Court itself reasoned that it would be futile to pass upon this matter because good faith can hardly be refuted, rebutted or disproved. This is good law.

Perhaps the Court did not really mean to say that a strike is valid simply because the strikers believed in good faith that they had some grievance against the employer. This hunch is based on the fact that immediately after making the startling pronouncement quoted above, the Court appealed to the opinion of Mr. Chief Justice Concepcion in the 1966 *Ferrer* case,[139] that "the strike in question had been called to offset what petitioners were *warranted* in believing in good faith to be unfair labor practices on

[135] G.R. No. L-24267, May 31, 1966, 17 SCRA 352, 360.
[136] G.R. No. L-7409. May 18. 1956.
[137] G.R. No. L-17411, May 19, 1966, 17 SCRA 65.
[138] G.R. No. L-18681, May 19, 1966, 17 SCRA 588.
[139] See fn. 135.

the part of management." [140] Mr. Chief Justice Concepcion was talking about a different situation altogether in the 1966 *Ferrer* case because while it is true that the Union in that case went on a strike in good faith still this was based on the fact that the employer had committed an unfair labor practice against them. Here, there was an objective basis to measure the subjective defense of good faith in striking against the employer. Put differently, had it turned out that the employer was not guilty of the charge of unfair labor practice, then the strike would have been invalid being dependent only on a subjective basis. As it turned out the strike was *warranted* because the employer did commit an unfair labor practice. In a similar case,[141] the Supreme Court upheld the validity of a strike called by the employees who believed in good faith that the lay-off of some employees was in violation of a prior order of the Court of Industrial Relations prohibiting lay-offs without its approval. It should be noted that the appeal to good faith has an objective basis—the court order—to test the validity of the defense of good faith in striking against the employer. Had there been such a violation of the court order on the part of the employer, then the strike would have been valid, otherwise it would have been trivial and thus invalid.

But if my hunch on what the Supreme Court really meant to convey with its pronouncement is wrong, then the question is: have the three previous cases been reversed by the 1971 *Shell Oil Workers Union* case? It would have served the cause of *elegantia juris* if the Supreme Court had been more definite in the articulation of its thinking on this matter.

C. Employment Status of Striking Employees

In the case of *Insular Life Assurance Co., Ltd. Employees Association v. Insular Life Assurance Co., Ltd.*,[142] the Union charged the Court of Industrial Relations of error in not ordering the reinstatement of the officials and members of the Union with backwages from the day they asked for re-admission, which was the last day set by the respondent Companies for the strikers to return to work or else they would be replaced. The Supreme Court found that the strike was the result of the employer's unfair labor practices and that the strikers were discriminatorily dismissed when they reported back for work. Thus, the Supreme Court sustained this contention of the Union to be in accordance with the settled decisions of the Supreme Court.

Mr. Justice Castro, who prepared the opinion of the Supreme Court, cited *Cromwell Commercial Employees and Laborers Union v. Court of In-*

[140] Emphasis supplied.
[141] Philippine Education Company, Inc. v. Court of Industrial Relations, G.R. No. L-7156, May 31, 1955.
[142] G.R. No. L-25291, January 30, 1971, 37 SCRA 244.

dustrial Relations,[143] where the Supreme Court distinguished between discriminatorily dismissed employees, on the one hand, and employees who merely joined the strike in protest of the employer's discriminatory act, on the other. In the former, the employees are entitled to backwages from the date of their discharge less interim net earnings, if any. In the latter case, the employees are not entitled to backwages, unless they have given up the strike and applied for readmission, or that they have been or will be reinstated subject to new conditions that discriminate against them because of their union activities.

In the 1971 *Insular Life Assurance Employees Association* case, the Supreme Court found that the officers and members of the Union went on strike because of the unfair labor practice committed by the respondent employer and that they gave up the strike and applied for readmission because of the ultimatum issued by the respondent employer. Thus, the Supreme Court ruled that those who were refused readmission on the date set by the respondent Companies themselves are entitled to backwages from the said date up to the time of their actual reinstatement, less income they may have earned during the period of their lay-off, pursuant to the equitable principle of mitigation of the liability of the debtors. The Supreme Court was referring to Article 2203 of the Civil Code which provides that the parties suffering loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question.

IX. BACKPAY

A. COMPUTATION

What constitutes backpay of an illegally dismissed employee?

In *East-Asiatic Co., Ltd. v. Court of Industrial Relations*,[144] the Supreme Court ruled that backpay constitutes the whole amount of the salaries or wages an employee would have earned in his employment were it not for his illegal dismissal, plus all other benefits, bonuses and general increases to which the illegally dismissed employee would have been normally entitled.

B. DEDUCTIONS

In *Insular Life Assurance Co., Ltd. Employees Association v. Insular Life Assurance Co., Ltd.*,[145] the Supreme Court ruled that earnings during the period of illegal dismissal should be deducted from backpay, pursuant

[143] G.R. No. L-19778, September 30, 1964, 12 SCRA 124.
[144] G.R. No. L-29068, August 31, 1971, 40 SCRA 521.
[145] G.R. No. L-25291, January 30, 1971, 37 SCRA 244.

to the equitable principle that no one is allowed to enrich himself at the expense of another.

Seven months later, in *East-Asiatic Co., Ltd. v. Court of Industrial Relations*,[146] the Supreme Court reversed its ruling in the *Insular Life Assurance Employees Association* case and with it the decisions in *Macleod & Co. of the Philippines v. Progressive Federation of Labor*,[147] and *Itogon-Suyoc Mines, Inc. v. Sañgilo-Itogon Workers Union*.[148] In the *East-Asiatic* case, the Supreme Court held that an employer is entitled to deduct from the total backwages, the "amount equivalent to the total salaries or wages the employee or worker would have earned in his old employment on the corresponding days that he was actually and gainfully employed elsewhere with an equal or higher salary or wage during the period of his illegal dismissal, such that if his salary or wage in his other employment was less, the employer may deduct only what has been actually earned." Stated differently, all earnings of the dismissed employee or worker during the period of his illegal dismissal over and above what he would have earned in his old employment are not deductible.[149] This means that an employer cannot use the amount earned elsewhere by an illegally dismissed employee over and above the amount he would have earned in his previous employment, but for the illegal dismissal, to minimize the damages that the employer would have to give as backpay.

Comments

A word or two about this new ruling of the Supreme Court.

The new rule expressed in the 1971 *East-Asiatic Company* case is not complete enough. In line with the policy of the Industrial Peace Act of promoting a sound and stable industrial peace, only net earnings during the period of the illegal dismissal of the employee are deductible[150] and to this add interest at the legal rate per annum.[151]

Net earnings means income less expenses which an illegally dismissed employee has incurred, were it not for the illegal dismissal, in looking for desirable new employment elsewhere or suitable available employment if the former is not possibly. Some examples of allowable expenses are reasonable transportation, room and board, incurred in obtaining work elsewhere.

In the 1971 *East-Asiatic Company* case, the Supreme Court, speaking through Mr. Justice Barredo, correctly ruled that as long as the reinstatement of an illegally dismissed employee has not been carried out, he can

146 G.R. No. L-29068, August 31, 1971, 40 SCRA 521.
147 G.R. No. L-7887, May 31, 1955, 97 Phil. 205 (1955).
148 G.R. No. L-24189, August 30, 1968, 24 SCRA 873.
149 G.R. No. L-29068, August 31, 1971, 40 SCRA 521.
150 Crossett Lumber Company, 8 NLRB 440 (1938).
151 Isis Plumbing and Heating Company, 138 NLRB 97 (1962).

seek employment or work anywhere, including a foreign country. Note, however, that the kind of work involved is available suitable employment when desirable new employment is not available. This means that an illegally dismissed employee can seek desirable new employment. But since desirable new employment is not easy to come by, the search for this type of employment must continue only for a reasonable period of time after which the illegally dismissed employee must accept available suitable employment. Otherwise, it will constitute loss of earnings willfully incurred by the employee for which the employer will no longer be liable.

X. THE PROBLEM OF THE SCOPE OF JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS

In *Mindanao Rapid Company, Inc. v. Omandam*,[152] the Supreme Court once again relied on its holding in *Philippine Association of Free Labor Unions v. Tan*[153] as to the scope of the jurisdiction of the Court of Industrial Relations under existing legislation. In the 1956 *Tan* case, the Supreme Court held that the jurisdiction of the Court of Industrial Relations extends only to: 1) labor disputes in industries indispensable to the national interest and certified as such by the President to the Court of Industrial Relations, 2) controversies concerning minimum wages under Republic Act No. 602, 3) controversies regarding hours of work under Commonwealth Act No. 444, and 4) controversies involving unfair labor practices.

According to the Supreme Court, the Court of Industrial Relations does not have jurisdiction over all other cases "even if they grow out of a labor dispute the intendment of the law being to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the relations between employer and employee by means of an agreement freely entered into in collective bargaining."[154]

Comments

After the promulgation of the *Tan* decision, quite a number of cases involving money claims arising out of or in connection with employment reached the Supreme Court. The issue common to these cases was whether the Court of Industrial Relations had jurisdiction over claims for underpayment of wages, separation or termination pay, overtime pay, and compensation for overtime work. To have applied the decision reached by the Supreme Court in *Philippine Association of Free Labor Unions v. Tan* to these types of cases would have taken them out of the jurisdiction of the Court of Industrial Relations. The reason for this is that in so far money claims are concerned, the decision in *Philippine Association of Free Labor*

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[152] G.R. No. L-23058, November 27, 1971, 42 SCRA 250.
[153] 99 Phil. 854 (1956).
[154] Citing Rep. Act No. 875 (1953), Sec. 7.

Unions v. Tan mentions only controversies involving minimum wages under the Minimum Wage Law. Thus, in cases involving money claims arising out of or in connection with employment, the Supreme Court was forced to distinguish between money claims filed by employees from money claims filed by ex-employees, saving the former for the Court of Industrial Relations and the latter for the regular courts. But this distinction failed to cover money claims of ex-employees who seek their reinstatement. Thus, in the case of *Monares v. C.N.S. Enterprises*,[155] the Supreme Court had to draw a further distinction between cases involving money claims filed by ex-employees who also seek their reinstatement from cases involving money claims filed by ex-employees who do not seek their reemployment. With this, the Supreme Court felt that the answer to the problem of the limits of the jurisdiction of the Court of Industrial Relations had been solved. Thus, in the case of *Price Stabilization Corporation v. Court of Industrial Relations*,[156] the Supreme Court held:

> Where the employer-employee relationship is still existing or is sought to be re-established because of its wrongful severance (as where the employees seek reinstatement), the Court of Industrial Relations has jurisdiction over all claims arising out of, or in connection with, employment such as those related to the Minimum Wage and the Eight-Hour Labor Law. After the termination of relationship and no reinstatement is sought, such claims become mere money claims and come within the jurisdiction of the regular courts.

But the confusion about the scope of the jurisdiction of the Court of Industrial Relations did not clear up as the Supreme Court had hoped it would. The principal reason for this is that the Supreme Court itself continued to apply the holding in *Philippine Association of Free Labor Unions v. Tan*, notwithstanding the fact that it was cognizant of the confusion that has arisen under these contrasting decisions. In at least two cases, the Supreme Court admitted giving contrary pronouncements on the scope of the jurisdiction of the Court of Industrial Relations. In *Philippine Wood Products v. Court of Industrial Relations*,[157] the Supreme Court took cognizance of the confusion brought about by the contradictory decisions in the *Tan* case, on the one hand, and in subsequent cases, on the other, forcing it to absolute the Court of Industrial Relations of responsibility in misjudging the limits of its own jurisdiction. The Court of Industrial Relations, said the Supreme Court, cannot be blamed for relying on the *Tan* decision and the subsequent cases based on it. In *Centro Escolar University v. Wandaga*,[158] the Supreme Court also acknowledged its awareness of some cases contradicting the decision rendered in the *Tan* case.

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155 G.R. No. L-11749, May 29, 1959.
156 G.R. No. L-13806, May 23, 1960.
157 G.R. No. L-15279, June 30, 1961.
158 G.R. No. L-25826, April 3, 1968, 23 SCRA 11.

In the case of *Sy Huan v. Bautista,*[159] the Supreme Court felt that the confusion over the scope of the jurisdiction of the Court of Industrial Relations could be cleared up by the simple expedience of combining together the holding in the *Tan* case and the holding in the *Price Stabilization Corporation* case. Pursuant to this theory, the Supreme Court came up with this composition:

> The jurisdiction of the Court of Industrial Relations, under the law and the jurisprudence, extends only to cases involving (a) labor disputes affecting an industry which is indispensable to the national interest and is so certified by the President to the Court, Section 10, Republic Act No. 875; (b) controversy about the minimum wage under the Minimum Wage Law, Republic Act No. 602; (c) hours of employment under the Eight-Hour Labor Law, Commonwealth Act No. 444; and (d) unfair labor practice, Sec. 5-(a), Republic Act No. 875. (*PAFLU v. Tan,* 52 O.G. 5836; *Reyes v. Tan,* 52 O.G. 6187), And such disputes and controversies, in order that they may fall under the jurisdiction of the Court of Industrial Relations, must arise while the employer-employee relationship between the parties exists, or the employee seeks reinstatement. When such relationship is over and the employee does not seek reinstatement, all claims become money claims that fall under the jurisdiction of the regular courts. (*Price Stabilization Corporation v. Court of Industrial Relations, et al.,* G.R. No. L-13906, May 23, 1960).

There is a serious objection to the pronouncement of the Supreme Court in *Philippine Association of Free Labor Unions v. Tan.* The view that the Court of Industrial Relations has no jurisdictional competence beyond the four types of cases specified in the *Tan* and *Sy Huan* decisions do not really coincide with the public policy expressed in Section 7 of the Industrial Peace Act even as that section is the basis of the Court ruling. Section 7 provides as follows:

> In order to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the relations between the employer and employee by means of an agreement freely entered into in collective bargaining, no court of the Philippines shall have the power to set wages, rates of pay, hours of employment, or conditions of employment except as in this Act is otherwise provided and except as is provided in Republic Act Numbered Six hundred two and Commonwealth Act Numbered Four hundred forty-four as to hours of work.

The crucial point in this provision is the removal in general of the power of the Court of Industrial Relations to compulsorily arbitrate questions having to do with wages, rates of pay, hours of employment, and other terms and conditions of employment. This is in line with the philosophy underlying the Industrial Peace Act that all bargainable matters should be the original concern of labor, on the one hand, and management, on the other, through the process of collective bargaining.

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[159] G.R. No. L-16115, August 29, 1961, 2 SCRA 1045.

But the withdrawal from the Court of Industrial Relations of the power to compulsorily arbitrate bargainable matters is not inflexible. As provided in Section 7 of the Industrial Peace Act, the Court of Industrial Relations is still empowered to compulsorily arbitrate questions involving bargainable matters when they get involved in a labor dispute in an industry indispensable to the national interest, present all conditions provided by Section 10; or when such bargainable matters get entangled in a dispute concerning minimum wages above the applicable statutory minimum or get enmeshed in an actual strike, present all conditions respectively provided for them in Subsections (b) and (c) of Section 16 of the Minimum Wage Law; or when such bargainable matters get involved in a dispute concerning the legal working day or compensation for overtime work, present the conditions required in Sections 1, 3 and 4 of the Eight-Hour Labor Law. The reasons why these issues become the business of the Court of Industrial Relations for compulsory arbitration is obvious to detail here.

Thus, the syntax of Section 7 of the Industrial Peace Act clearly shows that the three exceptions mentioned above are not the only types of cases falling within the jurisdiction of the Court of Industrial Relations. The exception provided in Section 7 is merely a statement of the types of cases involving bargainable matters that fall within the compulsory arbitration power of the Court of Industrial Relations. To be sure, there are other types of cases right in the Industrial Peace Act, let alone the other labor legislation, over which the Court of Industrial Relations has jurisdiction.

XI. JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS

Under existing legislation, the Court of Industrial Relations is empowered to hear and decide cases under:

1. Com. Act No. 103 (Court of Industrial Relations Act).
2. Com. Act No. 444 (Eight-Hour Labor Law).
3. Rep. Act No. 602 (Minimum Wage Law).
4. Rep. Act No. 875 (Industrial Peace Act).
5. Rep. Act No. 1052 (Termination Pay Law).

During the year in review the types of cases that reached the Supreme Court for decision concerning the jurisdiction of the Court of Industrial Relations involved only the Industrial Peace Act and the Termination Pay Law.

A. Under Republic Act No. 875

Under the Industrial Peace Act, the Court of Industrial Relations has authority to hear and decide the following:

(1) Cases involving unfair labor practices under Section 5(a) and (d), and contempt of court in unfair labor practice cases, under Section 5(e).

(2) Cases involving injunctions in unprotected union activities, under Section 9(d)(1), and in labor disputes in industries indispensable to the national interest, under Section 10.

(3) Cases involving the fixing of working conditions and terms of employment in labor disputes in industries indispensable to the national interest, under Section 10.

(4) Cases involving determination and redetermination of appropriate collective-bargaining units, under Section 12(a).

(5) Cases involving representation of employees, under Section 12(b) (c), (d), and (e).

(6) Cases involving appeals from certification elections, under Section 12(f).

(7) Cases involving the interpretation and enforcement of collective-bargaining contracts for the vindication of the rights of employers and employees, under Sections 13 and 16.

(8) Cases involving violations of internal labor organization procedures, under Section 17.

(9) Cases involving restoration of registrations and permits of labor organizations, under Section 23(d) .

(10) Cases pending before the Court of Industrial Relations at the time of the passage of the Industrial Peace Act, under Section 27.

Of the foregoing list, the only types of cases decided by the Supreme Court during the year in review were those falling under Items Nos. 1, 3 and 8.

1. *Unfair Labor Practice Cases*

Lawyers have developed many ways of trying to by-pass the Court of Industrial Relations in cases involving unfair labor practices. Whether this shows legal ingenuity or not is beside the point.

Take, for instance, the case of *Espanilla v. La Carlota Sugar Central and the National Sugar Workers Union.*[160] There the employees filed in the Court of First Instance of Negros Occidental a petition for declaratory relief with preliminary injunction against the Company and the Union. The Company answered the complaint alleging, among others, that: 1) it does not wish to be drawn into the dispute between the plaintiffs and the defendant union, and 2) its co-defendant labor union threatened to go on a strike in case it did not accede to the Union demand for the dismissal of the plaintiffs upon their failure to affiliate with the Union. For its part, the Union filed a motion to dismiss the petition for declaratory relief on the ground

[160] G.R. No. L-23722, March 31, 1971, 38 SCRA 186.

that: 1) the Court of First Instance had no jurisdiction over the subject-matter thereof because it involved a strike, and 2) the subject-matter was related to an unfair labor practice case then pending in the Court of Industrial Relations. After the hearing on the motion to dismiss, the trial court sustained the defendants and issued an order dismissing the petition for declaratory relief. The Supreme Court affirmed the lower court.

Analyzing the nature and purpose of the action filed by the employees, the Supreme Court, speaking through Mr. Justice Arsenio P. Dizon, reached the conclusion that the action was intended primarily to prevent the Company and the Union from committing an act which would constitute an unfair labor practice. In such a case, under Section 5(a) of the Industrial Peace Act, it is the Court of Industrial Relations that has exclusive jurisdiction over the case.

Take another example. In *Rustan Supervisory Union v. Dalisay and Rustan Pulp and Paper Mills, Inc.*,[161] the Union asked for recognition as the bargaining agent of its employees on the ground that it had the majority of the employees of the Company. At the same time, it presented a set of economic proposals for collective bargaining. The Company ignored the proposals. As a result the Union called a strike and picketed the Company premises. The Company reacted by filing in the Court of First Instance of Lanao del Norte a complaint for damages with preliminary injunction against the Union and its principal officers. On the same day the complaint was filed, the respondent court issued *ex parte* a writ of preliminary injunction ordering the defendants to end the strike and dissolve the picket. But the defendants instead filed a motion to lift the preliminary injunction, informing the respondent court that there was an existing industrial dispute with the Company brought about by the latter's refusal to bargain collectively with the Union as to terms and conditions of employment. This was denied by the lower court. The defendants brought the matter to the Supreme Court by means of an original action for certiorari and prohibition, challenging the jurisdiction of the lower court over an unfair labor practice case.

The Supreme Court sustained the petition. Citing the case of *Veterans Security Free Workers Union v. Cloribel*,[162] Mr. Justice Teehankee stated for the Court that Section 5(a) of the Industrial Peace Act explicitly provides for the exclusive jurisdiction of the Court of Industrial Relations over the prevention of unfair labor practices and is empowered to prevent any persons from engaging in any unfair labor practice, stressing the provision of law that this jurisdiction shall not be affected by any other means of adjustment or prevention that has been or may be established by an agreement, code, law or otherwise. The Supreme Court concluded that since the strike and picket involved in this case arose out of an unfair labor practice

[161] G.R. No. L-32891, April 29, 1971, 38 SCRA 500.
[162] G.R. No. L-26439, January 30, 1970, 31 SCRA 297.

of the respondent Company by its alleged refusal to bargain collectively with the petitioner Union, then the subject-matter falls with in the exclusive jurisdiction of the Court of Industrial Relations.

Take a third example. In *Associated Labor Union v. Cruz*,[163] the Court of First Instance of Rizal assumed jurisdiction over a case for damages with preliminary injunction against the Associated Labor Union for "patrolling or maintaining guards in the premises and the street leading to the factory of Goodyear Textile Manufacturing Company" notwithstanding the information given by the Union in its motion for the dismissal of the complaint and the lifting of the injunction issued by the respondent judge that there was a pending complaint of unfair labor practice filed against the Company in the Court of Industrial Relations as well as a strike which was called by the Union even before the complaint in the Court of First Instance was filed by the respondent Company.

The Supreme Court, in an opinion prepared by Mr. Justice Reyes, stated that while there is no indication in the complaint filed in the Court of First Instance that an industrial dispute existed between the parties, there was a discernible effort on the part of the respondent Company to avoid mentioning the real nature of the case existing between the parties. Furthermore, the record of the case shows that the Court of First Instance was not unaware of the situation actually obtaining in the case, considering that in the Union's answer to the complaint filed by the Company in the Court of First Instance, the Union specifically pleaded the existence of a strike and the pendency of an unfair labor practice case against the Company in the Court of Industrial Relations. The Supreme Court concluded that since the issue of the Union's liability for damages depends on the illegality of the acts allegedly commited by the Union, a question that is directly connected with the unfair labor practice case pending before the Court of Industrial Relations, then the case properly falls within the jurisdiction of the Court of Industrial Relations. The fact that no formal charge of unfair labor practice against the Union was filed in the Court of Industrial Relations when the complaint for damages was filed by the Company in the Court of First Instance, did not affect at all the jurisdiction of the Court of Industrial Relations to take cognizance of the unfair labor practice.

Comments

It would seem that after so many years since the enactment of the Industrial Peace Act in 1953, the exclusive jurisdiction of the Court of Industrial Relations over unfair labor practice cases would be a settled matter. But this does not seem to be the case. There are still district judges who take cognizance of this type of cases despite Section 5(a) of the Industrial Peace

[163] G.R. No. L-28978, September 22, 1971, 41 SCRA 12.

Act and the fact that the complaints, for all the attempt to cover up their labor relations nature, show that they involve unfair labor practices.

The decision in the 1971 *Rustan Supervisory Union* case emphasized not only the exclusive nature of the jurisdiction of the Court of Industrial Relations over unfair labor practice cases under Section 5(a) of the Industrial Peace Act but also the public policy therein contained that the jurisdiction of the Court of Industrial Relations over unfair labor practice cases can not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise. However, the Supreme Court did not elaborate on the unique features of the exclusive jurisdiction of the Court of Industrial Relations over unfair labor practice cases. Perhaps a brief statement about it would help.

The first is that the jurisdiction of the Court of Industrial Relations over the prevention of unfair labor practices as well as its authority to prevent any person from engaging in any unfair labor practice "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise." This means that the only method recognized for the adjustment or prevention of unfair labor practices is that provided in Section 5(b) and (c) of the Industrial Peace Act. And it does not matter at all that the means of adjustment or prevention of an unfair labor practice *other than* that provided in Section 5(b) and (c) have been established by agreement of the parties, by codal provision, by statutory fiat or by rules of court. Thus, for example, the Court of Industrial Relations can very well assert its authority over an unfair labor practice case, nothwithstanding a concurrent arbitration proceeding under the Arbitration Law.[164] The thrust of the Industrial Peace Act in the handling of unfair labor practice cases is their thorough ventilation in order that proper remedial measures can be taken to undo both the public and private harm occasioned by their commission. The Industrial Peace Act recognizes only two instances when an unfair labor practice complaint may ever be dismissed: 1) when, as a result of an investigation by the Court of Industrial Relations, no person named in the complaint has engaged in or is engaging in any such unfair labor practice,[165] and 2) when the complaining party himself withdraws the complaint [166] at any time prior to the decision of the case. When neither of these situations appears, the Court of Industrial Relations is required by the Industrial Peace Act to issue a general cease-and-desist order and, in addition thereto, take such remedial steps as will effectuate the policies of the Industrial Peace Act.

The second unique feature of this jurisdiction of the Court of Industrial Relations is the express prohibition against pre-trial procedure and

164 Rep. Act No. 876 (1953).
165 Rep. Act No. 875 (1953), sec. 5(c).
166 *Ibid.*

mediation or conciliation as provided in the second paragraph of Section 4 of Commonwealth Act No. 103, as amended by Commonwealth Act No. 559.

These features in the disposal of unfair labor practice cases are not found in the procedure for ordinary civil cases which are subject to pre-trial, mediation or conciliation, amicable settlement, or compromise. But unfair labor practice cases are unusual cases for they involve much more than private interests. There is no question that the public in general is affected, whether articulately or obscurely, by the clash of interests of the immediate parties to a labor relations case. This consideration and the public policy expressed in Section 1 of the Industrial Peace Act of eliminating the causes of industrial unrest and the maintenance of a sound stable industrial peace require the complete ventilation of unfair labor practice cases in order to undo both the private and public harm done and, thereby, serve as example to others to prevent the repetition of the same or nearly similar unfair labor practices. Obviously, the realization of this public policy would fail if the causes of industrial unrest are not completely unmasked and eliminated.

Two previous cases, *Central Azucarera Don Pedro v. Don Pedro Security Guards Union* [167] and *Luzon Glass Factory v. Court of Industrial Relations* [168] illustrate very well the uniqueness of the jurisdiction of the Court of Industrial Relations over cases involving unfair labor practices.

In the *Central Azucarera Don Pedro* case, the Court of Industrial Relations found that the employer had committed an unfair labor practice and issued a general cease-and-desist order plus the necessary specific affirmative steps to effectuate the policies of the Industrial Peace Act. In due time, the decision of the Court of Industrial Relations was appealed to the Supreme Court. In the *Luzon Glass Factory* case, the Court of Industrial Relations found the Company guilty of an unfair labor practice and issued a general cease-and-desist order including specific affirmative steps to put into effect the Industrial Peace Act. In due time, the decision was also appealed to the Supreme Court.

But while the appeals in both cases were pending, the parties in the *Central Azucarera Don Pedro* case simultaneously filed separate motions to withdraw the appeal on the ground that they had arrived at an amicable settlement of the unfair labor practice. In the *Luzon Glass Factory* case the parties filed a joint motion to withdraw the appeal on the ground that they had reached an amicable settlement of the unfair labor practice. Surprisingly, the Supreme Court agreed and ruled that the amicable settlements reached by the parties had rendered both cases moot and academic.

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[167] G.R. No. L-21610, March 15, 1968, 22 SCRA 1053.
[168] G.R. No. L-23319, October 7, 1968, 25 SCRA 437.

I'm afraid that the Supreme Court treated these two unfair labor practice cases as ordinary cases covered by ordinary rules of procedure. It overlooked the strict requirements of Section 5(a) and (b) of the Industrial Peace Act that the exclusive jurisdiction of the Court of Industrial Relations over unfair labor practice cases shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise.

It would seem to me that upon the filing of the motions to withdraw the appeals in these two cases, the Supreme Court should have remanded them to the lower court in order to comply with the procedure for the disposal of unfair labor practice cases laid down in Section 5(b) and (c) of the Industrial Peace Act. This is necessary because of the fact that the Court of Industrial Relations had previously condemned the employers in these cases of unfair labor practices and ordered remedial steps to put into effect or affirm the policies of the Industrial Peace Act.

The latest case decided by the Supreme Court touching on the unique procedure for the handling of unfair labor practices by the Court of Industrial Relations was *Kapisanan ng mga Manggagawa sa Alak v. Hamilton Distellery Co.*[169] It appears that in a prior case between the same parties,[170] the dispositive portion of the decision ordered the Company to cease and desist from the unfair labor practice complained of and, in addition thereto, pay the illegally dismissed employees backwages from the date of their dismissal to the date of their actual reinstatement. But after this decision become final and while the proceeding for the execution of the judgment in the unfair labor practice case was still pending, the case was suddenly terminated by the lower court after the Union and the Company entered into a compromise agreement which called for the dismissal of the unfair labor practice case and the dismissal of all claims for backpay which the Court of Industrial Relations had previously ordered as a remedial measure. The parties averred that they had amicably settled the unfair labor practice case between them and that they had lost interest in prosecuting their respective claims as a result of the offer and acceptance of the amount of ₱20,000 as liquidated backpay (out of the total sum of ₱320,789.50 as per Examiner's Report ordered by the Court of Industrial Relations, and out of the sum of ₱127,647.50 as per Employer's Counter Offer in his Manifestation).

Surprisingly the Court of Industrial Relations entertained the compromise agreement of the unfair labor practice case, which had in the meantime become final and executory, and issued an order approving the amicable settlement on the ground that it was a complete compromise of the

169 G.R. No. L-23714, June 30, 1970, 33 SCRA 887.

170 Kapisanan ng mga Manggagawa sa Alak v. Hamilton Distillery Co., G.R. No. L-18112, October 30, 1962, 6 SCRA 367.

respective claims of the parties and that there was nothing about it that contradicts law, morals or public policy and, forthwith, declared the unfair labor practice case closed.

While there may not be anything immoral in the compromise agreement of the unfair labor practice case, such agreement is definitely contrary to the law and public policy contained in the Industrial Peace Act. It should be noted that the award of backpay ordered by the Court of Industrial Relations in the 1970 *Hamilton Distillery Company* case was a remedial step for the adjustment and prevention of the unfair labor practice involved in the parent 1962 *Kapisanan ng mga Manggagawa sa Alak* case, which had become final and executory. As such, it can no longer be compromised or waived pursuant to the policy and intendment of the Industrial Peace Act as held in the case of *Dimayuga v. Court of Industrial Relations.*[171] Thus, the compromise agreement between the parties in the 1970 *Hamilton Distillery* case is not one of the means or methods recognized by the Industrial Peace Act in the handling and prevention of unfair labor practice cases. As a matter of law, it is explicitly ruled out by Section 5(a) of the Industrial Peace Act.

It is reassuring though that Mr. Justice Teehankee stressed in the 1971 *Rustan Supervisory Union* case the provision of the Industrial Peace Act that the exclusive jurisdiction of the Court of Industrial Relations over unfair labor practice cases cannot be affected by any other means of adjustment or prevention no matter that such means has been or may be established by an agreement, code, law or otherwise. These are precisely the kind of government or private intervention that are articulately avoided in the procedure for the trial of unfair labor practice cases in Section 5(a) and (b) of the Industrial Peace Act. In other words, these methods of intervention are not permitted by the Industrial Peace Act because of the public policy to expose and remedy every unfair labor practice so that a general cease-and-desist order may be issued and appropriate affirmative steps taken by the Court of Industrial Relations to undo both the public and private harm occasioned by an unfair labor practice.

2. *Over labor disputes in industries indispensable to the national interest*

In the case of *Philippine Airlines Employees Association v. Philippine Airlines, Inc. and the Court of Industrial Relations,*[172] the President certified the labor dispute between the parties to the Court of Industrial Relations as a national interest case, pursuant to Section 10 of the Industrial Peace Act. The trial judge immediately called the parties to a conference. After two days of unfruitful negotiations, the trial judge issued a return-

[171] 101 Phil. 590 (1957).
[172] G.R. No. L-32740, March 31, 1971, 38 SCRA 372.

to-work order requiring the striking employees, including those who may not have been actually at work during the strike, to forthwith call off the strike, lift the picket lines and return to work. To the employer the trial judge issued an order requiring him to admit the workers back to work under the same terms and conditions of employment existing before the strike. After receiving a copy of the return-to-work order, the Union filed a motion for reconsideration. While this was pending, the trial judge issued another order directing immediate compliance with the return-to-work order which the Court of Industrial Relations *en banc* affirmed.

In the Supreme Court, the Union questioned the ruling of the lower court that its return-to-work order was immediately executory, even though a motion for its reconsideration was pending before it. This argument did not impress the Supreme Court. Speaking through Mr. Justice Querube C. Makalintal, the Supreme Court stated that a return-to-work order is immediately effective and executory, notwithstanding a pending motion for its reconsideration. The reason for this, said Mr. Justice Makalintal, is found in the very nature of a national interest case certified by the President to the Court of Industrial Relations. A return-to-work order is issued in the exercise of the power of compulsory arbitration of the Court of Industrial Relations under Section 19 of Commonwealth Act No. 103.[173] And to say that its effectivity must await execution until it is affirmed in a motion for reconsideration is not only to emasculate the return-to-work order but, indeed, defeat the very policy of the law.

3. *Over cases involving violations of internal labor organization procedures*

In *Catura v. Court of Industrial Relations*,[174] a complaint was filed by more than 10% of the entire union membership against the President and Treasurer of the Philippine Virginia Tobacco Administration Employees Association for their refusal to render a full and detailed financial report and to make the books of accounts and other records of the financial activities of the Union open for inspection by the Union members. The complaint also alleged that the remedies provided in the constitution and by-laws of the labor union have all been exhausted by the complainants but to no avail. While the case was pending in the court below, the trial judge directed the union officers to deposit in court all the financial records of the

[173] Philippine Long Distance Telephone Company v. Free Telephone Workers Union, G.R. No. L-25420, March 30, 1968, 13 SCRA 1013; Bachrach Transportation Company, Inc. v. Rural Transit Shop Employees Association, G.R. No. L26764, July 25, 1967, 20 SCRA 779, Feati University v. Jose S. Bautista, G.R. No. L-21278, December 27, 1966, 18 SCRA 1191; Feati University v. Feati University Faculty Club, G.R. No. L-21462 & G.R. No. L-21500, December 27, 1966, 18 SCRA 1191; Rizal Cement Company v. Rizal Cement Workers Union, G.R. No. L-2747, July 30, 1960; Hind Sugar Company v. Court of Industrial Relations, G.R. No. L-13364, July 26, 1960.

[174] G.R. No. L-27392, January 30, 1971, 37 SCRA 303.

Union. The officers moved for its reconsideration on the ground that the subject-matter of the case is not within the competence of the Court of Industrial Relations. This was turned down by the Court of Industrial Relations prompting the officers to file a petition for review in the Supreme Court.

The Supreme Court ruled that the Court of Industrial Relations has exclusive jurisdiction, under Section 17 of the Industrial Peace Act, over cases involving violations of internal labor organization procedures.[175] According to Mr. Justice Fernando, the financial records in question are not the private property of the union officers and all that the challenged order required was the delivery of these records to the trial court in order to assure the effective administration of the Industrial Peace Act and to protect the rights of Union members against its officers.

Comments

The order which required the union officers to deliver the financial records of the Union to the trial court is within the power conferred on the Court of Industrial Relations in the trial of cases under Section 5(b) of the Industrial Peace Act. Since the procedure to be followed in the hearing of cases involving violations of internal labor organization procedures is the procedure for unfair labor practice cases, then, under Section 5(b), the trial judge is permitted to use every and all reasonable means to ascertain the facts of the case without regard to technicalities of law or procedure.

B. UNDER REPUBLIC ACT NO. 1052

1. *Termination of employment not subject to separation pay*

Section 1 of the Termination Pay Law provides certain conditions for the termination of, not dismissal from, employment. Under these conditions, an employer may terminate employment without having to pay separation compensation, regardless of the type of his establishment or enterprise. The reason for this is to exclude employees who have given cause for their separation.

The employer may terminate employment without payment of separation compensation in two instances: 1) where the employment is for a definite period and the termination of employment is for a just cause,[176] or,

[175] Citing Tolentino v. Angeles, 99 Phil. 309 (1956); Kapisanan ng mga Manggagawa v. Bugay, 101 Phil. 18 (1957), and Philippine Association of Free Labor Unions v. Padilla, 106 Phil. 591 (1959).

[176] Baltazar v. San Miguel Brewery, Inc., G.R. No. L-23076, February 27, 1969, 27 SCRA 71; Employees and Laborers Cooperative Association v. National Union of Restaurant Workers, G.R. No. L-18697, February 28, 1963, 7 SCRA 421; Marcaida v. Philippine Education Company, G.R. No. L-9960, May 27, 1957.

if this is absent, a timely written notice of the termination of employment is made by the employer,[177] and 2) where the employment is for an indefinite period even without just cause subject to the timely written notice given by the employer to the employee.

During the year in review, the Supreme Court further clarified the rule regarding the second type of employment not subject to separation pay in *Philippine Rabbit Bus Lines, Inc. v. Calma*[178] and in *P. G. Tomas and Co., Inc. v. Court of Industrial Relations.*[179]

2. *The issue of dismissal under the Termination Pay Law*

In *Insular Life Assurance Employees Association v. Insular Life Assurance Co., Ltd.*,[180] the Supreme Court called attention to the "inordinate significance" which the Court of Industrial Relations gave to the acceptance of separation pay by the employees under Republic Act No. 1052, as amended. This should not have been the case because, according to the Supreme Court, while employers may be authorized under Republic Act No. 1052 to terminate employment by serving the required compensation, the said Act may not be used to cover up illegal dismissals, such as dismissal based on union activities. Citing the case of *Cu Ki Lam v. Nena Micaller*,[181] the Supreme Court reaffirmed the proposition that the Termination Pay Law cannot be used to circumvent a final order of the court reinstating an illegally dismissed employee or cloak a scheme to negate the rights of an employee who has been the victim of an unfair labor practice.

Comments

Attention must be called to the concurring opinion of two justices in the *Micaller* case clarifying the majority opinion. The concurring opinion posits the view that the decision in the 1956 *Micaller* case is not as absolute as it sounds. If the interval of time between the original discriminatory dismissal due to an employee's union activities and the subsequent termination of employment under the Termination Pay Law is ample enough to remove all suspicion or possibility that the subsequent termination of employment had any relation whatsoever with the union activity of the employee involved, then the termination of employment under the Termination Pay Law would be valid.

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177 Philippine Refining Company, Inc. v. Rodolfo Garcia, G.R. No. L-21871, September 27, 1966, 18 SCRA 107.
178 G.R. No. L-33085, October 29, 1971, 42 SCRA 173.
179 G.R. No. L-25034, December 29, 1971, 42 SCRA 655.
180 G.R. No. L-25291, January 30, 1971, 37 SCRA 244.
181 99 Phil. 905 (1956).